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An Introduction

BY

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PRINTED IN THE NETHERLANDS

To my parents

Salih and Radieh Khalilieh

and my teacher

Professor Michal Artzy

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PREFACE

It is commonly asserted that the modern law of the sea, like other rules of inter-state relation inherited by the international community, is essentially of Western origin, the legacy of centuries of European legal and commercial practice. That this hypothesis is so widely accepted may well stem from the near absence of scholarly works investigating the contribution of other nations to the development of international maritime law.

Within a century of the rise of Islam in Arabia in 622 C.E., the Umayyad caliphs dominated more than half of the maritime possessions of Persia and Byzantium. The eastern, western, and southern shores of the Mediterranean Sea fell entirely under Islamic control, as did the Red Sea, the Persian Gulf, and parts of the coast of the Indian Ocean. Despite the historical importance of this development, however, the Islamic military and economic expansion on the seas had, until recently, attracted scant attention in modern Islamic scholarship. Now, thanks to recent publications based on the Cairo Geniza documents, and Islamic historical sources, travel accounts, and nautical literature, we are better informed about various aspects of Islamic maritime activities during the classical period (212-650 A.H./827-1252 C.E.), *i.e.*, from the conquest of Crete and Sicily by the Andalusians and Aghlabids to the fall of the Ayyūbids in Egypt.

This study is based on my Ph.D. thesis which was completed at Princeton University in 1995. Further work on the topic was carried out while teaching at the University of Haifa where I am now employed. The re-shaping and modification is intended for a wider range of readers including scholars and students. It examines Islamic maritime law and the actual practice of Muslim sailors during the classical period, and it contains seven chapters. The first surveys the important terminology of maritime life. The second chapter examines the interrelationship of shipowners, crew, and passengers. The third chapter deals with maritime commercial laws; contracts for the leasing of ships, freight charges, transportation of goods, taxes and tolls in the ports. It also examines losses at sea, describes the laws concerning jettison and *general average*, collision, and salvage of jetsam. Chapter four covers military maritime law. Chapter five emphasizes the legal significance of territorial waters as interpreted by Muslim jurists, governors, and seafarers. The sixth chapter discusses how

Islamic maritime law was adjudicated at sea. And the final one concludes the study by explaining how sea-travel affected the performance of Islamic religious duties.

In addition to the examination of the legal methods practiced by Muslim jurists to solve issues pertaining to the sea, this study surveys differences of legal opinion among various Islamic law schools, including the Ẓāhirī and Shīʿite. This discussion also touches on the question of continuity between the maritime practices of, on the one hand, Persia and Byzantium and, on the other hand, the new Islamic polity.

While working on the thesis at Princeton I have incurred debts of gratitude to many individuals: Professor Abraham L. Udovitch who suggested this topic, Professor William Jordan, Professor John Willis, Professor Daniel Hillel, and Professor Mark Cohen who introduced me to the world of the Cairo Geniza and encouraged me to incorporate these invaluable records into my studies. I thank the Department of Near Eastern Studies of Princeton University for permission to use the resources of the S. D. Goitein Laboratory for Geniza Research at Princeton. I owe a further debt to the Honorable Lowell Thomas, Jr. and his wife for the financial support they granted me while at Princeton University. A number of people must receive hearty thanks for the assistance and advice they have offered me: Katherine Kiefer, Denise El-Soufi, Gigi Edross, Ussama Makdisi, Christopher Stone, Carolina Erdocia, and Talʿat Harb.

My year at the University of Haifa has been productive and fruitful. Working with the students of the Department of Maritime Civilizations and being part of the Center for Maritime Studies gave me the opportunity to, physically, be involved with Medieval maritime matters. Special thanks are owed to Dr. Maurice Hatter whose generosity has allowed this manuscript to be published. I extend thanks to Professor Menahem Kellner, Professor Yossi Mart, Mr. Dick Bruggeman, and Ms. Ada Volkan. Special thanks go to the Editorial Staff at E.J. Brill: Dr. Peri Bearman, Mrs. Trudy Kamperveen and Mr. Jan Fehrmann.

I wish to extend my heartfelt thanks to my friends: Raneen Abu Salem, Hedi Ben-Aicha, Laetitia and Charlie Ufford. Throughout the writing of this manuscript, my mother has been a constant source of spiritual encouragement. My father sadly did not live to see this book completed. Finally, my greatest debt is, as ever, to my teacher Professor Michal Artzy, from whom I learned more than I will ever be able to properly acknowledge.

GLOSSARY OF ARABIC TERMS

A.H. after the *Hijra*, Migration of the Prophet from Makkah to Medīna; the year it occurred, 622 C.E., is the base-year of the Muslim era

ahl al-maʿrifa (pl.) experts in maritime affairs (nautical industry and maritime custom)

ahl al-ʿudūl (pl.) witnesses with good reputation

ʿallāma literally a religious scholar, but in this context the ship's captain

amān a temporary safe conduct given to an enemy alien merchant, his life and property, allowing him to carry out commercial transactions in Islamic territories

ʿāmil al-qirāḍ (q.v.) a merchant agent/commenda dealer

amīr a prince, also a governor of a province

amr Allāh (lit. Act of God) *force majeure* such as rough seas and bad weather

ʿāqila the group of persons upon whom devolves, as a result of a natural joint liability with a person who committed homicide or inflicted bodily harm

ʿasākir al-baḥriyya, or *ʿasākir al-marākib* (pl.) armed personnel who protected commercial vessel from hostile attacks

asrā prisoners of war

ʿawār, or *ʿuwār* a defect or an imperfection in an article of merchandise

bāʿ the span of the outspread arms, fathom

bayt al-māl the public treasury

balāgh reaching the destination

barā'a a pledge proving of payment of the dues at the port

barīd derived from the Latin *veredus*/ Greek *beredos* "post horse," usually applied to the official service of the post and intelligence in the Islamic states. In the stages of changing horses, theoretically four *farsakh*s (q.v.) equal one *barīd*

barṭīl a gratuity paid by the lessee to the sailors upon their arrival at the destination

bayyina indisputable evidence/proof

bēth dīn (Heb.) a Jewish court

daftar a private record or booklet containing reports about commercial transactions and shipping costs

dalīl the ship's pilot

ḍamān liability, responsibility, guarantee

dār al-ḥarb the world or realm of war, enemy country

dār al-Islām the world of Islam (Islamic territories, lands under Islamic control)

dār al-wakāla a warehouse and the office of the representative of merchants

dayyān (Heb.) a judge, equivalent to the Muslim *qāḍī*

dābba (pl. *dawāb*) riding animal

dhimmī a Christian or Jew living in the Islamic state and acknowledging the domination of Islam

dhirāʿ a measurement of the arm from the elbow to the tip of the middle finger, that is a cubit also the name given to the instrument for measuring it. A legal arm (*al-dhirāʿ al-sharʿiyya*) equals 49.875 cm

dīnār a gold coin

dūnīj a long boat which also served as lifeboat in the Indian Ocean

farsakh a parasang: the Persian unit of measure based on the distance that could be traveled on foot, or riding animal, in a definite time, a "marching mile" from the Parthian word *frasakh* came into Armenian as *hrasakh*, and into Syrian as *parséhā*, that could be covered on foot in an hour, or 'marching mile'. In Islam, the *farsakh-i sharʿī* was officially fixed at three Arab *mīl* ('miles'), each of 1000 *bāʿ* ('fathoms'), each of 4 canonical ells (*cf. al-dhirāʿ al-sharʿiyya*), each of 49.875 cm. thus, the *farsakh* equals 5.985 km

fatwā (pl. *fatāwā*) an authoritative opinion on a matter of Islamic law

fiqh the science of the Islamic sacred law

faqīh (pl. *fuqahāʾ*) a jurist or a jurisconsult

gaon (Heb.) the head of the Jewish academy

geniza a place for storing unusable books, writings, and ritual objects in order to prevent the desecration of the name of God, which might be found in them, while they await burial in a cemetery

ghalfaq (pl. *ghalāfiqa*) shipwright (shipbuilder)

ghanāʾim (pl.) the spoils of war divided among those who took part in the expedition after deducting one-fifth of the total for the *imām* (q.v.)

ghifāra a heavy tribute paid to Jabbāra freebooters to protect commercial vessels from other piratical attacks

ḥabba a grain or one-third of a *qīrāṭ* (0.0648 gr.)

ḥabr (pl. *aḥbār*) religious leader of either Christians or Jews

ḥadīth (pl. *aḥādīth*) a report of a saying or action of the Prophet, or such reports collectively. Sometimes this is translated 'tradition', as having been transmitted from reporter to reporter it has nothing to do with traditions in the ordinary sense of anonymously inherited group lore

ḥajj the official Muslim pilgrimage to Makkah in its full form

halacha Jewish tradition

ḥanafī, referring to the Sunnī legal *madhhab* (q.v.) ascribed to Abū Ḥanīfa (80-149/699-767). The Ḥanafī school is well represented in 'Irāq, its home country, and in Syria. It spread early to Afghanistan, the sub-continent of India, and Turkish Central Asia.

ḥanbalī, referring to the Sunnī legal *madhhab* (q.v.) ascribed to Aḥmad Ibn Ḥanbal (167-241/780-855). Its two great centers were Baghdād, the home town of Aḥmad Ibn Ḥanbal, and, somewhat later, Damascus, where the activity of the Ḥanbalī reformer Ibn Taymiyya (d. 728/1328), is one of the highlights of a brilliant period in the history of the school. The school emphasizes the use of carefully chosen *ḥadīth*s (q.v.) preference for a 'weak *ḥadīth*' over a strong analogy

ḥarbī a warship

ḥirz a place guarded by a watchman or protected by physical boundaries

ḥukm the legal consequence of the facts of a case

ijāra a hire, lease, or charter (corresponding to the model of the Roman *locatio conductio operarum*)

ijmā' a consensus of the religious authorities in a legal question

ijtihād an effort, the use of individual reasoning: an independent judgment in a legal or theological question, based on the interpretation and application of the four *uṣūl* (the foundations of Islamic jurisprudence, *i.e.*, Qurʾān, Sunna, *qiyās* [analogy], and *ijmāʿ* [consensus]) as opposed to *taqlīd* (the adoption of the legal decision of a *madhhab*)

ikhtilāf a difference of opinion, disagreement

imām a leader in prayer, used also for head of the Muslim community especially by the Khārijites (q.v.) and Shīʿites (q.v.)

irdabb originally a Persian dry measure of capacity used in Egypt under the Ptolemies and the Byzantines, equal to 72.3 kg. of wheat. In the Mamlūk period, the *irdabb* of Cairo corresponded to 68.8 kg. of wheat, whereas the *irdabb* of Alexandria was twice as much

jihād a religious war (against the infidels, as a religious duty)

jizya a poll tax imposed on Christians and Jews living under Islamic domain

jund (pl. *ajnād*) regular troops

karrānī the ship's scribe who recorded the names of passengers and the quality and quantity of cargo in the ledger (cargo book)

khārijites (or *khārijīs*) members of a group of puritanical Muslim sects that developed during the late Umayyad and early ʿAbbāsids periods. The school flourished and developed in the Maghrib during the 8th century C.E., where the Ibāḍī-Khārijī leadership was able to establish a state in the central Maghrib (now Algeria) centered at Tāhart (Tiaret). Later, the school's legal theories were welcomed in Tunisia. The school spread also in Persia, Arabia, and Omān

khashabāt (pl.) coastal buildings erected along the shores of the Arabian Sea and the Persian Gulf as guides for pilots and to secure

the maritime lane against hostile attacks. They functioned as watchtowers and light-houses

khums the taxes that a foreign had to pay a fifth of the total merchandise to Muslim authorities at the port

kirā' rent, hire, lease, pay, wages

k'ri'ah (Heb.) tearing of the clothing as a sign of mourning

madhhab a school of Islamic law (religious creed, faith, domination), or generally the system followed by any given religious group

majlis (pl. *majālis*) a court session

mālikī referring to the Sunnī legal *madhhab* (q.v.) ascribed to Mālik Ibn Anas (97-179/715-795). The Mālikī school spread westwards from its first centers, Medīna and Egypt, over practically the whole of North Africa and over Central and West Africa as far as it is Muslim; it was also predominant in Muslim Spain. The Mālikī school ignores custom as an official source of law. Custom (*'urf, 'āda*) is recognized as a restrictive element in dispositions and contracts, and as a principle of interpreting declarations

marāṣid (pl.) transit taxes levied along routes

marḥala (pl. *marāḥil*) normally the distance that a traveler can cover in one day. According to the classical Arabic geographers, the *marḥala* is between six and seven *farāsikh* (q.v.), or approximately 36 to 42 km.

markab a small type of sea-going vessel

mas'ala (pl. *masā'il*) an unsolved problem and question

mashyakha (pl. *mashā'ikh*) an elderly, venerable gentleman: the title of the ruler of any one of the sheikdoms along the Persian Gulf also the title of a native scholar trained in the traditional sciences, a clerical dignitary, or a member of a religious order

matāʿ consignment, shipment, household effects, merchandise, utensils, foodstuffs

mawqūfa an endowment fund (*waqf* a pious foundation)

miḥrās (pl. *maḥāris*) a watchtower functioned to alert local inhabitants against enemy attacks from the sea

milla religious community

muʿallim the ship's captain or master

mufīī a specialist in religious law who gives an authoritative opinion

muḥākama an adjudication

muḥtasib an inspector of a market

murābit (pl. *murābiṭūn* [French, *marabout*]) originally the inmate of a *ribāṭ* (q.v.) used in the sense of holy man or *Ṣūfī* teacher

mushrif ʿalā al-markab the ship's overseer (occasionally, the representative of the shipowner)

musta'min an enemy alien merchant who was granted an *amān* pledge to trade and carry out business transactions in Islamic territories

nagīd the head of the Egyptian Jewish community from the Fāṭimid to the Mamlūk periods

nākhūdhā owner or captain of the ship, used primarily in the Indian Ocean and Persian Gulf

nasī (Heb.) princes (of the House of David)

nawāzil (sing. *nāzila*) collections of queries, judgments, and legal responses relating to actual incidents presented to a judge or jurisconsult for final settlement

nāẓir a port superintendent

parnās (Heb.) welfare official

qāḍī a Muslim religious judge or magistrate

qā'id literally leader, a title used in the Maghrib for a governor

qārib iterally a boat, used as a lighter, lifeboat, or fishing craft

qibla the direction of the Kaʿba, the shrine at Makkah

qirāḍ a commenda in form of partnership

qīrāṭ one twenty-fourth of a *dīnār*

qiyās an analogy or parity of reasoning

radkh a bonus share of war spoils given to a *dhimmī* who participated in a military operation

rayyis al-markab a chief, in the Maghrib a title of the captain of the mariners

rabb al-safīna a shipowner

ribāṭ (pl. *ribāṭāt*) literally a fortified monastery: a coastal defense system consists of watch stations along the coastal frontiers

rubāʿī one quarter *dīnār* (q.v.)

rubbān see *muʿallim*

rūm (pl.) Byzantines or Italians (in a broader context it refers to Europeans)

ruqʿa a cargo book (in the Indian Ocean)

safīna a large sea-going or ocean-going vessel, more commonly called *markab* (but *markab* is smaller)

ṣāḥib al-sukkān a helmsman

ṣalāt prayer performed five times a day: before dawn, after noon, mid-afternoon, before sunset, and mid-evening

sanbūq ship's boat (another type of lifeboats)

shāfiʿī referring to the Sunnī legal *madhhab* (q.v.) ascribed to Muḥammad Ibn Idrīs al-Shāfiʿī (150-204/767-820). The school started from Cairo, where Shāfiʿī spent the last years of his life. It prevails in Lower Egypt, in Ḥijāz, in south Arabia, and in most of East Africa as far as it is Muslim. In the classical Islamic period the school spread in ʿIrāq and was well represented in Persia. Likewise, the Shāfiʿī school spread in the coastal regions of India, in Indonesia, in Malaya, and in the rest of South-East Asia. The school advocates rigorous care to verify *ḥadīth*s (q.v.), especially of the Prophet's *sunna* use of analogy

shahbandar a port superintendent (see *nāẓir*)

shahīd martyr, one killed in battle with the infidels

shāmil a cargo book (in the Mediterranean Sea, called *ruqʿa* in the Indian Ocean)

sharīʿa the sacred law of Islam

shīʿite (Arabic, *shīʿa* [party of ʿAlī]), general name for that part of the Muslims that held to the rights of ʿAlī and his descendants to leadership in the community whether recognized by the majority or not or any particular sect holding this position. Shīʿī is the adjective, or refers as a noun to an adherent of the Shīʿa. The most well known Shīʿī groups are the Zaydīs, the Ismāʿīlīs or the Seveners, and the Twelvers

sirqa theft

siyāsāt the management of the ship and crew (navigational ethics)

sulfa the whole freight (here used with regards to downpayment)

sulṭān authority, dominion, ruling power

sunna a precedent, normative legal custom literally, the Prophet's sayings and doings

sūra a chapter of the Qur'ān

taqsīṭ a proportional participation in losses

thaghr (pl. *thughūr*) frontier fortress (here it refers to a coastal frontier)

tillis a sack of coarse drill used mainly for grain

umma the Islamic community, the community of the faithful

umanā' (pl.) the agents of the *sulṭān* (q.v.)

'umra a minor pilgrimage

'urf local custom, customary legal practice

'ushārī a Nile boat

'ushr the tenth used in the sense of tithe (payment of 10% of the merchant's produce)

wadī'a a deposit, on commission

wakīl a deputy, agent, proxy, or a trustworthy commissioner assigned by the *qāḍī* to take care and deliver the inheritance to the real heir(s) of the deceased

wakīl al-tujjār the representative of the merchants

wālī a governor, chief of police, guardian, or warship leader

ẓāhirī an Islamic law school founded by Dāwūd Ibn Khalaf (d. 270/884). The school's principle was to rely exclusively on the literal meaning (*ẓāhir*) of the Qur'ān and the traditions from the Prophet and to reject as contrary to religion not only the free

exercise of personal opinion which had been customary before Shāfiʿī, but even the use of analogical and systematic reasoning which Shāfiʿī had retained. The school basically spread in Andalusia, and its legal thoughts we know mainly from the writings of Ibn Ḥazm (d. 456/1065)

zakāt an alms-tax

zinā adultery, fornication, unlawful intercourse

ziqq a bag or skin used as a receptacle.

INTRODUCTION

Many Western scholars, especially those who study Islamic maritime history, argue that the classical Islamic world (212-650/827-1252), feared the sea.[1] However, the great majority of Muslim historians repudiate this view. They hold that the fear originated with Muslim caliphs and provincial governors rather than with the Qur'ān and Prophetic traditions. Historically, the roots of this debate can be traced to the classical Islamic period. Some jurists [*fuqahā'*] approved of the notion of traveling on the high seas, while others rejected it. The advocates of the pro-maritime view were mostly North African, Andalusian, and Omānī jurists who lived in port cities and whose followers were skillful seafarers and merchants who invested their capital in overseas trade. Some jurists were inclined to approve of seafaring as long as Islamic dominance at sea was clear. They even encouraged Muslims to settle in the coastal frontiers, carry out military expeditions, and expand their overseas trade.

The reluctance of 'Umar Ibn al-Khaṭṭāb (12-23/634-644), the second Muslim caliph, to permit his generals to embark on naval adventures did not result from religious considerations. The *sunna* of the Prophet, *i.e.*, his sayings and doings, and the Qur'ān do not prohibit Muslims from sailing the seas. The Qur'ān urges Muslims to consider navigating as well as exploiting the rich resources of the sea. Likewise, the *sunna* comprises hundreds of traditions [*ḥadīths*] that exhort Muslims to organize maritime expeditions, to sail to Makkah on pilgrimage, to exploit marine resources, and to expand overseas trade.

Regarding military operations at sea, Prophetic traditions give more credit to Muslim naval warriors, as well as amphibious troops, than to holy warriors who fight on land. One *ḥadīth* says that "a

[1] James Hornell, *Water Transport: Origins and Early Evolution* (Cambridge: Cambridge University Press, 1946), p. 230. An accepted authority on maritime history of the Orient, Hornell believes that Muslims have had a problem with the sea: "Profound distrust of the unfamiliar sea was inherent in the Arab followers of Muḥammad at the time when he launched his religious war upon the Eastern world. Had not he enunciated the dictum 'He who twice embarks on the sea is truly an infidel'? By this was implied a religious condemnation of travel by sea as entailing ceremonial impurity." Like Hornell, other western scholars suggest that Muslims feared travel on the sea.

maritime expedition is better than ten campaigns of conquest on land." The Prophet also said that "a day at sea is equivalent to one month on land, and a martyr at sea is like two martyrs on land," and that "those who perish while fighting at sea will receive double the compensation of those fighting on land."[2] Al-Shaybānī added that "any Muslim who takes part in a sea expedition would be doubly compensated and that once the soldier puts his foot on ship all his sins are forgiven as if he were born anew."[3] This emphasis on the double reward *might* reflect the legacy of a traditional fear of the sea and the necessity for encouraging recruitment for a religious war [*jihād*] at sea. Maritime expeditions were regarded as very risky owing to unreliable weather and the naval power and maneuvers of the enemy, but these factors did not allow a soldier to flee the scene of the battle unless the Muslim admiral commanded his flotilla to withdraw collectively.[4]

An early tradition indicates that maritime journeys were restricted to those people intending to perform the *ḥajj* and to undertake military expeditions: "No one should sail on the sea except the one who is going to perform pilgrimage [*ḥajj*] or minor pilgrimage [*ʿumra*] or the one fighting in Allāh's path, for under the sea there is a fire, and under the fire there is a sea."[5] Certain jurisprudential works even

[2] Muwaffaq al-Dīn Abī Muḥammad ʿAbd Allāh Ibn Aḥmad Ibn Muḥammad Ibn Qudāma, *Al-Mughnī* (Cairo: Dār Hajar lil-Ṭibāʿa wal-Nashr, 1986), vol. 13, pp. 12-13; Abū Bakr ʿAbd al-Razzāq Ibn Hummām al-Ṣanʿānī, *Al-Muṣannaf* (Beirut, 1970), vol. 5, pp. 285-286; Abū al-Ḥussayn Aḥmad Ibn Muḥammad Ibn Aḥmad Ibn Jaʿfar Ibn Mufliḥ, *Mukhtaṣar al-Qudūrī* (Karachi, 1960), vol. 3, p. 311; Abū Zakariyyā Aḥmad Ibn Ibrāhīm Ibn Muḥammad Ibn al-Naḥḥās, *Mashāriʿ al-Ashwāq ilā Maṣāriʿ al-ʿUshshāq wa-Muthīr al-Gharām ilā Dār al-Islām* (Riāḍ: Dār al-Nashr al-Islāmiyya, 1990), vol. 1, pp. 245-262; ʿAlī Ibn ʿAbd al-Malik al-Muttaqī, *Kanz al-ʿUmmāl fī Sunan al-Aqwāl wal-Afʿāl*, (Aleppo, 1969), vol. 4, pp. 334-336.

[3] Muḥammad Ibn al-Ḥasan al-Shaybānī, *Kitāb al-Siyar al-Kabīr* (Hyderabad, 1335/1916), vol. 1, pp. 25-26.

[4] Ibn al-Naḥḥās, *Mashāriʿ*, vol. 1, pp. 260-261; Aziz Ahmad, *A History of Islamic Sicily* (Edinburgh: Edinburgh University Press, 1975), pp. 42-43. In order to inspire Muslim marines during naval encounters, some outstanding Muslim jurists accompanied or even led the warships. The aged jurist Asad Ibn al-Furāt was born in Khurāsān in 142/759. He was appointed commander of the Muslim force in Sicily by the third Aghlabīd *amīr* Ziyādat Allāh I (202-224/817-838), and left Ifrīqiyya with 70 warships for Sicily in the month of Rabīʿ al-Awwal 212/31 May-29 June 827. He died with a large number of his troops around 213/828 in a plague which spread in his camp.

[5] Abū Dāwūd Sulaymān Ibn al-Ashʿath, *Sunan Abī Dāwūd* (Beirut: Dār Iḥyāʾ al-Sunna al-Nabawiyya, 197?), vol. 3, p. 6.

opposed undertaking maritime voyages for commercial purposes [*wal-fuqahā' yakrahūn rukūb al-baḥr li-ṭalab al-ma'īsha*].[6] However, the aforementioned Prophetic tradition and the viewpoint of the *fuqahā'* should not be interpreted as a religious prohibition of sea travel for commercial purposes. Justification for this view is found in the *fatāwā* collection of Ibn Taymiyya (663-728/1263-1328), who, when asked whether a merchant who died at sea is considered a martyr, answered:

> Yes, he is considered a martyr if he sailed at the appropriate time. The Prophet, *may peace be upon him*, said: "The drowned person, the burnt person, the person who died of pestilence, the woman who died in the postpartum period, and the person whose house collapsed are considered martyrs." Traveling on sea is approved as long as safety measures are undertaken. However, it is prohibited to sail under unfavorable conditions. Whoever does so is looking to kill himself. Such a person would not be called a martyr [*shahīd*], *God knows best.*[7]

Regardless of the goal of the voyage, the travelers on sea and the naval warriors were prohibited from traveling under unfavorable weather conditions.[8]

Ibn Rushd (450-520/1058-1126) provides evidence for the legal and official attitude toward sea journeys:

> There is no doubt that traveling on the sea, as was depicted by 'Amr Ibn al-'Āṣ to 'Umar Ibn al-Khaṭṭāb, *may God be pleased with them*, is risky. The rules controlling sea travel had changed from the days of 'Umar

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[6] Abū Ja'far Muḥammad Ibn al-Ḥasan Ibn 'Alī al-Ṭūsī, *Tahdhīb al-Aṭkām* (Al-Najaf: Dār al-Kutub al-Islāmiyya, 1959), vol. 6, p. 388; Abū Bakr Aḥmad Ibn 'Abd Allāh Ibn Mūsā al-Kindī, *Al-Muṣannaf* (Masqaṭ: Wizārat al-Turāth al-Qawmī wal-Thaqāfa, 1983), vol. 18, p. 52.

[7] Aḥmad Ibn Taymiyya, *Majmū' Fatāwā Shaykh al-Islām Aḥmad Ibn Taymiyya* (Riāḍ, 1961), vol. 24, p. 293. The response of Ibn Taymiyya might be based on Qur'ānic verses that encourage international commerce and intercourse. *Sūra* 16, verse 14 states: "It is He Who has made the sea subject, that ye may eat thereof flesh that is fresh and tender, and that ye may extract therefrom ornaments to wear, and thou seest the ships therein that plough the waves, that ye may seek [thus] of the bounty of Allāh and that ye may be grateful."

[8] Ibn al-Naḥḥās, *Mashāri'*, vol. 1, p. 261: "It is approved to travel on the sea to undertake maritime attack to perform the *ḥajj* ... etc. if the weather conditions allow a safe voyage. Conversely, whoever undertakes maritime journey under rough conditions of sea which could endanger him, he would be considered mutinous [*wa-innamā yajūz rukūb al-baḥr lil-jihād wal-ḥajj wa-ghayrihimā idhā ghalabat al-salāma, wa-ammā rukūbahu ḥāla hayajānihi wa-nudūr al-salāma fīhi, fa-innahu lā yajūz wa-fā'iluhu 'āṣin*]."

Ibn al-Khaṭṭāb until the days of ʿUthmān Ibn ʿAffān [23-35/644-656].[9] Unlike ʿUmar Ibn al-Khaṭṭāb's prohibitive policy toward travel on the sea—which was also adopted by ʿUmar Ibn ʿAbd al-ʿAzīz [99-101/717-720]—ʿUthmān Ibn ʿAffān approved of it. Henceforth, the people continued traveling on the sea until the days of ʿUmar Ibn ʿAbd al-ʿAzīz, and so forth. Apparently, ʿUthmān's judgment must have been based on His [God's] saying [Qur'ān, 10:22]: (He it is who enableth you to traverse through land and sea). In view of this fact, it is impossible to enumerate the graces of God that are forbidden to His human beings. The prohibition which is manifested by God, *be He exalted*, is due to the improper behavior of human beings at sea which could endanger their lives. This evidence is explicitly demonstrated by His saying [Qur'ān, 2:195]: (And make not your own hands contribute to your destruction), besides, however, the Qur'ānic evidence [Qur'ān, 4:29]: (nor kill [or destroy] yourselves, Allāh hath been to you most merciful).

The prohibitions are also applied to cases of commerce and profit that come from the sea. Nonetheless, traveling on the sea is approved for carrying out maritime *jihād* and performing the *ḥajj*. Nor did any of the caliphs disavow this rule. The *sunna* of the Prophet established traveling at sea for these two purposes. According to the account, the Prophet, *may peace be upon him*, took a midday nap in Umm Ḥarrām's place. He then awoke laughing. She said: "Apostle of Allāh, what made you laugh?" He replied: "I saw a group of my nation journeying in the path of God and sailing in the midst of the sea like kings on thrones." In return for their maritime expedition, the Muslim naval warriors will be rewarded in paradise in the hereafter. Moreover, if it is permitted to undertake a military expedition on the sea, it is also even more appropriate to allow sailing for the *ḥajj*. Traveling on the sea is approved as long as the voyage is undertaken in favorable climatic conditions. Under rough and severe climatic conditions, it is prohibited to undertake a military expedition or a voyage for the *ḥajj*. This is ʿUthmān Ibn

[9] According to historical accounts, after the conquest of Syria when the Arabs were confronted by the Byzantine army at Alexandria which had the support of a strong naval force, the Arab generals realized the necessity of raising their own naval fleet. It is reported that when ʿUmar Ibn al-Khaṭṭāb made enquiries about sea voyages, ʿAmr Ibn al-ʿĀṣ, the governor of Egypt and army commander, described a man [in a ship] as "a small worm standing on a piece of wood [*dūdan ʿalā ʿūd*]." In response, ʿUmar Ibn al-Khaṭṭāb wrote to him: "Let no water intervene between me and thee [Muslim warriors], and do not camp in any place that I cannot reach riding on my mount." Muʿāwiya, who at the time was the chief governor of Syria and Egypt, also wanted to attack the Byzantines by the sea, but ʿUmar deprecated the idea. Yohanan Friedmann, "Minor Problems in al-Balādhurī's Account of the Conquest of Sind," *Rivista degli Studi Orientali* 45 (1970), pp. 253-255; Sayyed Sulaiman Nadavi, "Arab Navigation," *Islamic Culture* 15 no. 4 (1941), pp. 445-446; Abdul Ali, "The Arabs as Seafarers," *Islamic Culture* 54 no. 4 (1980), pp. 213-214.

> ʿAffān's intention when he said to Muʿāwiya[10]: "I allow you to undertake the maritime expedition [against Byzantine Cyprus in 28/648] if you sail accompanied by your wife and sons. This will have to mean that you will carry out the attack during the sailing season [*ibbān al-rukūb*], when the conditions of the sea allow a safe passage and when you can ensure that such an expedition does not put your wife and sons in jeopardy." *God knows best.*[11]

A careful reading of Ibn Rushd's chronicle reveals that caliphs and provincial governors dictated maritime policy to Islamic nations. ʿUmar Ibn al-Khaṭṭāb was the first Muslim caliph to adopt a prohibitive policy limiting travel at sea, but this policy lasted less than three years. Ibn Rushd does not illuminate the reasons that induced ʿUmar to adopt this strategy. According to the historical evidence, a turning point in ʿUmar's attitude must have occurred in 20/641. In that year ʿUmar sent ʿAlqama Ibn Mujazziz with a naval force across the Red Sea to ward off attacks upon the Muslims on the Abyssinian coast. The expedition suffered great privation and the ships were wrecked. As a result of this disaster, the caliph seems to have decided not to continue the naval efforts but rather to forbid naval engagements forever.[12]

Prior to that year, the caliph is said to have ordered ʿAmr Ibn al-ʿĀṣ to build ships to transport corn and wheat to Medīna to relieve a famine. The severe famine in Arabia in 18/639 prompted the caliph not only to build ships but also to dig a canal of sixty-nine miles connecting the Nile to the Red Sea. This work was completed after six months of relentless toil, and twenty ships laden with sixty thousand *irdabb*[13] of wheat and corn sailed to Arabia and anchored safely in Jār, the port of Medīna. The transportation of foodstuffs to Arabia demonstrates the expansion of trade activity between the

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[10] Muʿāwiya Ibn Abū Sufyān was the governor of Syria from 21-41/641-661, and the founder of the Umayyad state. As the first Umayyad caliph he reigned from 41/661 to 60/680.

[11] Abū al-Walīd Muḥammad Ibn Aḥmad Ibn Rushd, *Al-Bayān wal-Taḥṣīl wal-Sharḥ wal-Tawjīh wal-Taʿlīl fi Masāʾil al-Mustakhraja* (Beirut: Dār al-Gharb al-Islāmī, 1984), vol. 17, pp. 24-26.

[12] Mohamed Aly Fahmy, *Muslim Sea-Power in the Eastern Mediterranean from the Seventh to the Tenth Century A.D.* (Cairo: National Publication & Printing House, 1966), p. 74.

[13] *Irdabb* was originally a Persian dry measure of capacity which had been used in Egypt under the Ptolemies and the Byzantines. It equals 72.3 kg. of wheat. In the Mamlūk period, the *irdabb* of Cairo corresponded to 68.8 kg. of wheat, whereas the *irdabb* of Alexandria was twice as much. See *The Encyclopaedia of Islam* vol. 4 (Leiden: Brill, 1991), p. 119.

Mediterranean and the Red Sea regions. ʿAmr Ibn al-ʿĀṣ allegedly wanted to dig a canal connecting the Mediterranean to the Red Sea, but ʿUmar opposed that plan due to the fact that the Arabs had not yet developed an organized naval defense force, and therefore such a canal would expose the holy places of Islam to naval attacks from Byzantium. However, ʿUmar's rejection of the Mediterranean-Red Sea canal scheme should not be equated with outright disapproval of navigation.[14] Indeed, one might argue that the establishment of the first Islamic *commercial fleet* and *naval power* occurred during the reign of ʿUmar.

Ibn Khaldūn (733-809/1332-1406), the Tunisian jurist, historian, statesman, and scholar, devoted a section of his history to describing the attitude of classical Islam to the sea. He reports that when the royal and governmental authority of the Arabs had become firmly established in the newly captured Mediterranean countries, they employed sea-going nations for their maritime needs. In the span of a few decades the Arabs' navigational skill grew and they became well versed in nautical science and the construction of galleys for maritime expeditions. By setting up a shipyard in Tūnis, the Arabs were able to control the Mediterranean islands of Majorca, Minorca, Ibiza, Sardinia, Sicily, Pantelleria, Malta, Crete, and Cyprus.[15]

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[14] Nadavi, "Arab Navigation," p. 446; Ali, "The Arabs as Seafarers," p. 214.

[15] For further details about Muslim naval activity in the Mediterranean Sea from 641 to 1191, see Archibald Lewis, *Naval Power and Trade in the Mediterranean A.D. 500-1100* (Princeton: Princeton University Press, 1951); Mohamed Aly Fahmy, *Muslim Sea Power in the Eastern Mediterranean from the Seventh to the Tenth Century A.D.* (Cairo, 1966); Aḥmad ʿAbbādy & Sayyed Sālem, *Tārīkh al-Baḥriyya al-Islāmiyya fī Miṣr wal-Shām* (Beirut: Dār al-Nahḍa al-ʿArabiyya, 1981); Sayyed Sālem & Aḥmad ʿAbbādy, *Tārīkh al-Baḥriyya al-Islāmiyya fī al-Maghrib wal-Andalus* (Beirut: Dār al-Nahḍa al-ʿArabiyya, 1969); Wilhelm Hoenerbach, *La Marina Arabe del Mar Mediterráneo en Tiempos de Muʿāwiya* (Tiṭwān: Instituto Muley el-Ḥasan, 1954) (in Arabic); Niqūlā Ziyāda, "Al-Usṭūl al-ʿArabī fī Ayyām al-Amawiyyīn," *Studies on the History of Bilād al-Shām during the Umayyad Period* (Amman, 1990), pp. 37-86; Claude Cahen, "Ports et Chantiers Navals dans le Monde Mediterranéen Musulman jusqu'aux Croisades," in *La Navigazione Mediterranea nell'Alto Medioevo* (Spoleto: Centro Italiano di Studi sull'alto Medioevo, 1978), pp. 299-319; Ibrāhīm ʿAdawī, "Nashāṭ Asāṭīl al-Dawla al-ʿArabiyya fī Sharq al-Baḥr al-Mutawassiṭ," *Al-Majalla* 19 (1958), pp. 37-44; Vassilios Christides, "The Naval Engagement of Dhāt As-Ṣawārī A.H. 34/A.D. 655-656: A Classical Example of Naval Warfare Incompetence," *Byzantina* 13 (1985), pp. 1331-1345; *idem*, *The Conquest of Crete by the Arabs (ca. 824), A Turning Point in the Struggle between Byzantium and Islam* (Athens, 1984); Andreas Stratos, "The Naval Engagement at Phoenix," *Essays in Honor of Peter Charanis*, ed. by Ageliki E. Laiou-Thomadakis (New Brunswick: Rutgers University Press, 1980), pp. 229-247; Costas Kyrris, "The Nature of the Arab-Byzantine Relations in Cyprus from the Middle of the 7th to the Middle of the

Ibn Khaldūn adds that by the late fourth and early fifth centuries A.H./eleventh century C.E. Muslim sea power had declined. The ʿUbaydid (Fāṭimid) dynasty in Egypt and Umayyad dynasty in Andalusia had become weak and were affected by "infirmity." As a result, Christian naval forces were able to take possession of the Mediterranean. In the early sixth century A.H./twelfth century C.E., as the eastern Mediterranean basin fell under Christian domination, the Almohads controlled only the western basin. Ibn Khaldūn concludes his account by stating:

> Then, the naval strength of the Muslims declined once more, because of the weakness of the ruling dynasties. Maritime habits were forgotten under the impact of the strong Bedouin attitude prevailing in the Maghrib and as a result of the discontinuance of Spanish habits. ... The Muslims came to be strangers in the Mediterranean. The only exceptions are a few inhabitants of the coastal regions. They ought to have had many assistants and supporters, or they should have had support from the dynasties to enable them to recruit help and work toward the goal of [increasing seafaring activities].[16]

Ibn Khaldūn distinguishes between three different groups: the indigenous inhabitants, the Arabs, and the Bedouins. He describes the indigenous groups as skillful navigators and shipwrights, and acknowledges that initially the new immigrants and warriors from northern Arabia were not acquainted with seafaring. Indeed, the first Islamic maritime confrontation with Byzantium at Dhāt al-Ṣawārī

10th Century A.D.," *Graeco-Arabica* 3 (1984), pp. 149-175; Aḥmad Ḥussein, "Dawlat al-Aghāliba wal-Siyāda al-ʿArabiyya ʿalā al-Baḥr al-Mutawassiṭ: Fatḥ Ṣiqilliya wal-Tawassuʿ fī Orūppā," *Majallat al-Buḥūth al-Tārīkhiyya* 5 (1983), pp. 89-106; Ahmad, *A History of Islamic Sicily*, pp. 1-40; Ḥussein Muʾnis, "Ghārāt al-Nūrmāniyyīn ʿalā al-Andalus (229/844 and 245/859)," *Al-Majalla al-Tārīkhiyya al-Miṣriyya* 2 (1949), pp. 19-76; Yaʿacov Lev, "The Fāṭimīd Navy, Byzantium and the Mediterranean Sea (909-1036 C.E./297-427 A.H.)," *Byzantion* 54 (1984), pp. 220-252; Abbas Hamdani, "Some Considerations on the Fāṭimid Caliphate as a Mediterranean Power," *Congresso di Studi Arabi e Islam, Ravello* (1966), pp. 385-396; William Hamblin, "The Fatimid Navy during the Early Crusades (1099-1124)," *The American Neptune* 56 no. 2 (1986), pp. 77-83; Muḥammad Abū al-Faḍl, "Ghazwat al-Biyāzina wal-Qaṭalān li-Jazīratay Yābisa wa-Miyūrqa al-Islāmiyatayn (508-509/1114-1116)," *Al-Tārīkh wal-Mustaqbal* 4 (1990), pp. 59-104; ʿIṣām Yusālam, *Juzur al-Andalus al-Mansiyya (89-685/807-1287)* (Beirut: Dār al-ʿIlm lil-Malāyīn, 1984), pp. 43-189, 398-462; A. S. Ehrenkreutz, "The Place of Saladin in the Naval History of the Mediterranean in the Middle Ages," *Journal of the American Oriental Society* 75 no. 2 (1955), pp. 100-116; Anīs Jarrār, "Uṣṭūl Ṣalāḥ al-Dīn," *Al-Abḥāth* 13 no. 1 (1960), pp. 70-95.

[16] ʿAbd al-Raḥmān Abū Zayd Ibn Muḥammad Ibn Khaldūn, *Kitāb al-ʿIbar wa-Dīwān al-Mubtadaʾ wal-Khabar fī Ayyām al-ʿArab wal-ʿAjam wal-Barbar* (Beirut: Dār al-Kitāb al-Libnānī, 1961), vol. I, pp. 447-454.

35/655 (known as Phoenix in Latin sources) revealed the unfamiliarity of Muslim naval warriors with maritime battles.[17] For instance, the engineers, shipwrights, navigators, and crew members who established Islamic maritime power in the Mediterranean Sea and executed the naval campaign at Phoenix were Syro-Palestinian Greeks and Egyptian Copts. However, in the course of time, two processes would occur in the newly conquered countries: Islamization and migration of natives from the Arabian peninsula to the eastern, southern, and western coastal regions of the Mediterranean Sea.[18] The newly converted inhabitants—who were considered in the eyes of Muslim jurists as a part of the Islamic nation—continued practicing navigation since the sea played an essential role in their daily economic life.

Many Arab clans and families who migrated to the newly conquered Mediterranean territories came from the inner regions and southeastern coasts of the Arabian peninsula. A classic study of the settlement of Arab tribes and families in Andalusia between 91/710 and 422/1031 shows that the great majority of the eighty-six Arab clans preferred to take up permanent residence either in the inner territories or along the northern frontiers of the Iberian peninsula.[19] Nevertheless, some Arab groups with maritime heritage established their own maritime colonies in various places along the coast of Andalusia. The Yemenī sailors' union at Bajjāna (Spanish Pechina) is a typical example of an independent maritime colony. The canton of Pechina was settled by the Arabs of Yemen, who had been charged by Muḥammad Ibn ʿAbd al-Raḥmān (238-273/852-886) with the task of maintaining a coastal fortress (*ribāṭ*) to protect the region against possible maritime attacks; in return, he granted them posses-

[17] During the battle at Dhāt al-Ṣawārī the Byzantines made no efforts to drive off their enemies, but rather allowed the Arabs to tie the Byzantine and Arab ships together with ropes and chains. Since the naval battle was taking place on the high seas and not in a confined space, there was no excuse for this grave Byzantine error. After the ships of the two rival fleets were tied together, a fierce struggle with swords and daggers followed, and, as described by Ibn al-Athīr, the sea battle was transformed into a land battle.

[18] ʿUmar ʿAbd al-Salām al-Tadmurī, "Al-Fatḥ al-Islāmī wa-Siyāsat al-Iskān li-Sāḥil Dimashq (Libnān)," *Proceedings of the Second Symposium on the History of Bilād al-Shām during the Early Islamic Period up to 40 A.H./640 A.D.* (Amman, 1987), vol. 2, pp. 333-361; ʿAmikam Elʿad, "The Coastal Cities of Palestine during the Early Middle Ages," *The Jerusalem Cathedra* 2 (1982), pp. 146-167.

[19] Muṣṭafā Aḥmad, *Al-Qabāʾil al-ʿArabiyya fī al-Andalus ḥattā Suqūṭ al-Khilāfa al-Amawiyya (91-422/ 710-1031)* (Casablanca, 1983), pp. 401-476.

sion of the fertile valley of the Andarax. This maritime republic, which was known in Arabic as *ursh al-Ỿaman*, maintained commercial and military fleets. Between 328/939 and 333/944, the navy of Pechina took part in four maritime expeditions carried out by the Andalusian fleet against Christian coastal cities in France, Spain, Morocco, and Tunisia. After a few decades of semi-independent existence, Pechina was incorporated in 310/922 into the Umayyad community; it maintained its prosperity during the first half of the fourth century A.H./tenth century C.E., and in 344/955 when ʿAbd al-Raḥmān III (300-350/912-961) made Almeria, which became the biggest and most important port city in Andalusia, the regional capital.[20] This short account indicates that Muslim Arab groups settled the coastal frontiers with the intention of developing and expanding Islamic naval activity in the Mediterranean Sea.

The degeneration of Islamic maritime civilization in the Mediterranean Sea resulted from the penetration of Bedouin tribes. In 442/1050, the Hilālīs (Banū Hilāl) who had ravaged the province of Barqa (Libya) and left it to the Sulaymīs, continued their advance toward Gabès, Bèja, Qayrawān, al-Mahdiyya, Bougie (Bijāya), and the Central Maghrib. This invasion had formidable impact on the socio-economic and political life of the region. In addition to destroying the basis of Tunisian agriculture, industry, and sub-Saharan trade, the resulting deterioration of the port cities led to a decline in maritime commerce. Navigational activity along the coast between Gabès to Būna (Bône) seems to have been paralyzed, and therefore the port cities were exposed to hostile attacks by Sicilian and Italian flotillas.[21]

[20] Huici Miranda, "Badjdjāna," *The Encyclopaedia of Islam* vol. 1 (1986), p. 864; Iḥsān ʿAbbās, "Ittiḥād al-Baḥriyyīn fī Badjdjāna bil-Andalus," *Al-Abḥāth* 23 (1970), pp. 3-14; Sālem & ʿAbbādy, *Tārīkh al-Baḥriyya al-Islāmiyya fī al-Maghrib wal-Andalus*, pp. 167-171; Muṣṭafā, *Al-Qabā'il al-ʿArabiyya*, pp. 470-471. It is worth mentioning in this context that the Andalusian groups that conquered Crete in 212/828 were also of Yemenī origin.

[21] Ibn Khaldūn, *Al-ʿIbar*, vol. I, pp. 264-265, writes about these two tribes: "It is noteworthy how civilization always collapsed in places the Bedouins took over and conquered, and how such settlements were depopulated and laid in ruin. The Yemen, where Bedouins live, is in ruins, except for a few cities. Persian civilization in the Arab ʿIrāq is likewise completely ruined. The same applies to contemporary Syria. In Ifrīqiyya and the Maghrib when they were devastated by Banū Hilāl and Banū Sulaym in the early fifth century A.H. and who settled there for 350 years, the whole region between the Sūdān and the Mediterranean Sea was destroyed. This is attested to by the relics of civilization there, such as monuments, architectural sculpture, and the visible remains of villages and hamlets." Riāḍ Daghfūs, "Al-ʿAwāmil al-

Together, these arguments—based on historical and juridical sources—suggest that in theory the classical Islamic world had no categorical aversion to the sea. The attitude of temporal leaders, however, varied considerably from that of the jurists. Several caliphs and provincial governors did not recognize the commercial importance of the sea. Most, however, were aware of the strategic and economic potential of sea travel and therefore devoted much attention to developing coastal regions and to expanding overseas trade.

Provincial governors often faced a trade-off between building new port cities or making do with the pre-existing port cities, coastal fortresses [*ribāṭs*] and watchtowers [*miḥrāses*]. In most cases, they opted for the latter course of action. First, the construction of new cities would have required a massive transfer of population from the Arabian peninsula to the coasts. At the very least, building new cities would have meant the displacement of indigenous inhabitants from the inland regions to the coasts, thereby provoking their resentment. Second, founding a new urban center would have entailed putting a severe strain on the public treasury [*bayt al-māl*]. Nevertheless, some of the *ribāṭs* that were first built as isolated outposts eventually expanded into major urban centers, as occurred, for instance, at the *ribāṭs* of Sūsa (Tunisia) and Almeria (Spain).

The Origin of Islamic Maritime Law and Practice

Within less than a century of the emergence of Islam in Arabia, the Prophet's followers dominated more than half of the maritime possessions of their former neighbors. The eastern, western, and southern shores of the Mediterranean Sea were entirely under Islamic dominion as were the Red Sea, the Persian Gulf, and parts of the coast of the Indian Ocean. The Islamic expansions in the east and west united the former Persian and Byzantine territories which had been split by the successors of Alexander the Great (356-323 B.C.E.). Owing to this new political unity, commercial activity between the Far East and the Mediterranean greatly expanded. Muslim caliphs, especially the Umayyads, maintained the administrative practices of

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Iqtiṣādiyya li-Hijrat Banī Hilāl wa-Banī Sulaym min Miṣr ilā Ifrīqiya," *Revista Editada por el Instituto Arabe de Cultura* 4 (1981), pp. 147-163; Jamil Abun-Nasr, *A History of the Maghrib in the Islamic Period* (Cambridge: Cambridge University Press, 1993), pp. 69-71; H. R. Idris, "Hilāl," *The Encyclopaedia of Islam* vol. 3 (1986), pp. 385-387; Lewis, *Naval Power and Trade*, p. 243.

Rome and Byzantium in the southern shores of the Mediterranean, and Persian administrative system in the eastern provinces of the Islamic empire. During the first century of Muslim domination in the eastern Mediterranean, freedom of navigation and overseas commerce continued despite the wars and naval raids between Muslims and Christian countries.

On the eve of the Islamic invasions shipping in the Mediterranean regions was primarily controlled by the church, state, rich merchants, and middle class entrepreneurs. For example, the commercial ships of the church of Alexandria sailed eastward to India and Ceylon and westward to Marseilles at the time when the Byzantines still preserved maritime supremacy over the Mediterranean, and the commerce of the Mediterranean world was largely in the hands of Syrians and Egyptians. The patriarch of the church hired sailors, maintained a commercial fleet and a dockyard, and regulated maritime laws.[22] Similarly, the Rhodian Sea Law, a Byzantine collection of maritime laws, was codified between 600 and 800 C.E., the same period as the Islamic conquest of Syria, Palestine, Egypt, and North Africa.[23]

While Orientalists and Islamicists are well informed about Islamic personal, obligatory, religious, and commercial laws, their knowledge concerning the regulations and practices pertaining to the sea is very limited. Theological sources, *i.e.*, the Qur'ān and Prophetic traditions, and jurisprudential literature from the first and second Islamic centuries provided rules for dealing with the enemy in war and peace, treatment of captives, distribution of spoils, and religious duties, but were *silent* with regard to regulations and customs on the high seas. Historical documents and papyri from the first century A.H. allow for a closer examination of the establishment and organization of early Islamic naval power, but barely mention the rights and duties of the admiral, captain, sailors, soldiers, and shipwrights. Apparently, for the first two centuries of the Islamic expansion in the Mediterranean and the Indian Ocean, the rules governing the official and legal procedures in the ports and on board, the relationships among shipowner, captain, crew, merchants, and travelers, and the jettisoning and distribution of losses remained vague. The only sensible explanation that we may propose is that, with the exception of

[22] George R. Monks, "The Church of Alexandria and the City's Econimic Life in the Sixth Century," *Speculum* 28 (1953), pp. 355-362; Rogers S. Bagnall, *Egypt in Late Antiquity* (Princeton: Princeton University Press, 1993), pp. 289-293.

[23] Walter Ashburner, *The Rhodian Sea-Law* (Oxford, 1909), p. cxii.

religious and personal laws, Muslim authorities maintained the judicial system and practices in the former Byzantine and Persian territories. Furthermore, later Muslim jurists occasionally applied the term custom [*ʿurf*] to pre-Islamic maritime regulations in use in the ports and coastal cities of the Mediterranean, Red Sea, Persian Gulf, and Indian Ocean.

The period from the first half of the ninth century to the early eleventh century was a time of Islamic naval supremacy, beginning with the conquest of Crete, Sicily, and Pantelleria. The domination over the Mediterranean channel (between Tunisia and Sicily) and these strategic islands, and the comparatively tolerant attitude of Muslim governments in Egypt, Ifrīqiyya (Tunisia), and Andalusia toward the *dhimmīs*, contributed to the development of the east-west Mediterranean trade. The "Commercial Revolution" in the Mediterranean, which was in full bloom in the Muslim world,[24] created further legal complications in the ports and on board. In the same period, the first Islamic legal treatise on the law of the sea, attributed to the Mālikī jurist Muḥammad Ibn ʿUmar Ibn ʿĀmir al-Kinānī al-Andalusī al-Iskandarānī (d. 310/923), was compiled. This collection, known as the *Treatise Concerning the Leasing of Ships and the Claims between Their Passengers*, contains nine chapters and includes queries and opinions of other Mālikī scholars.[25]

The present study examines the Islamic legal data concerning seafaring and riverfaring during the classical period (from the ninth to the thirteenth centuries C.E.) with emphasis on the Mediterranean Sea. It attempts to elucidate the legal methods used by Muslim jurists to settle disputes that occurred in port and at sea, and to identify the rules and customs that Muslim and *dhimmī* shipowners, sailors, merchants, and passengers adopted during this period. In addition, it will try to determine if the legal opinions of jurists within a single Islamic law school and among schools were similar. If they were, then why did these jurists not codify their laws as the Romans and the later Byzantines did? Lastly, can we apply the Braudellian theory[26] by

[24] Robert Lopez, "The Trade of Medieval Europe: the South," *Cambridge Economic History* (1952), vol. 2, p. 278.

[25] Muḥammad Ibn ʿUmar Ibn ʿĀmir al-Kinānī al-Andalusī al-Iskandarānī, *Kitāb Akriyat al-Sufun wal-Nizāʿ Bayna Ahlihā*, edited and published with notes and introduction by Muṣṭafā A. Ṭāher in *Cahiers de Tunisie* 31 (1983), pp. 6-53.

[26] Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II* (New York: Harper & Row Publishers, 1972), vol. 1, p. 276. Braudel argues that the Mediterranean forms a "human unit and that different regions of the Medi-

considering the Islamic maritime customs in the Mediterranean as a continuity of the Rhodian Sea Law?

Methodologically, our approach to these questions will begin with a discussion of the terminology and technology of ships and tackle, before turning to the religious duties of sailors and travelers at sea. The legal and documentary material upon which this study is based comes from various sources: jurisprudential queries, Cairo Geniza documents, travel accounts and navigational literature, international commercial and diplomatic treaties. Familiarity with these sources will significantly contribute to our understanding of how legal theory was translated into reality.

Survey of Sources

Jurisprudential Queries [Fatāwā]

The term *fatwā* denotes an opinion on a point of law with regard to all civil or religious matters. The conditions required by the classical doctrine for the exercise of the profession, or even for the delivery of a *fatwā*, were: being Muslim, having integrity [*'adāla*], and possessing legal knowledge [*ijtihād*] or the ability to reach the solution of a problem by personal reasoning. Accordingly, the *muftī* (a specialist in religious law who gives an authoritative opinion) could be a woman, or a slave, or a blind and dumb person (except in the case of a *muftī* who was a public official). The *fatwā* (*responsum*) may be given to private individuals, to magistrates in the exercise of their profession, and to other authorities. *Fatāwā* came into existence in several ways. Private individuals frequently sought legal opinions on problematic aspects of ritual law. Litigants in a lawsuit customarily solicited legal opinions prior to appearing before a judge. And judges themselves consulted *muftī*s about cases that raised particularly difficult legal issues; therefore, the Mālikī authorities in Andalusia attached *muftī*s to the courts of magistrates as advisers.[27]

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terranean are connected not by the water, but by the peoples of the sea." The core of this hypothesis is that, as a whole, peoples around the Inland Sea practice similar traditions.

[27] E. Tyan, "Fatwā," *The Encyclopaedia of Islam* vol. 2 (1991), p. 866; David S. Powers, "Fatwās as Source for Legal and Social History: A Dispute over Endowment Revenues from Fourteenth-Century Fez," *Al-Qantara* 11 (1990), pp. 295-296.

In addition to *fatāwā*, jurisprudential works used different terms such as *masā'il*, *nawāzil*, and *aḥkām*. The *masā'il*, by definition, were unsolved problems or questions, and objections propounded by a third person, which were followed by answers, explanations, or refutations. Sometimes the author, at the request of a third person, composed a monograph on a group of themes, which were dedicated to the patron. The disputation did not necessarily take place within a single law school, however; *dhimmīs* and Muslim jurists of different doctrines could join the session. These discussions do not necessarily have any legal or practical authority. Thus, the *masā'il*, even they are essentially theoretical, feature very useful details.[28]

The *nawāzil* (occurrences/events) were collections of queries, judgments, and legal responses relating to actual cases presented to a judge [*qāḍī*] or a jurisconsult [*muftī*] for final settlement. This explains why the *nawāzil* hold the attention of the historian.[29] The term *aḥkām* (pl. of *ḥukm*) signifies a decision or a judgment; in the judicio-religious norm, the *aḥkām* were rules established by God or His Prophet. For example, the Prophetic tradition states: "Whosoever hires anyone, let him pay his hireling with a known fee for a known duration [*man ista'jara ajīran fal-yu'ājiruhu bi-ajrin ma'lūm li-ajalin ma'lūm*]."[30] Therefore, the hiring contract, as a rule, had to contain two basic principles, the fee [*ajr*] and duration [*ajal*]; otherwise it would be null.

Since the first century of Islamic history, Muslim jurists have endeavored to deduce God's law from legal rules and principles that are either contained in the Qur'ān and the Prophetic *sunna* or capable of being derived from these two sources by means of reasoning by analogy [*qiyās*] or on the basis of juristic consensus [*ijmā'*]. The establishment of *qiyās* was a result of the need to find solutions to problems not foreseen in the texts and to define rules applicable to new situations. The practice of *qiyās* thus came to be a means of establishing a judicial ruling for issues not specifically mentioned in these texts. While the *ijmā'* was born of the need to ensure the coherence of the nascent doctrine of Islam, the purpose of *ijmā'* was to preserve the social and doctrinal unity of the parent community

[28] H. Daiber, "Masā'il wa-Adjwiba," *The Encyclopaedia of Islam* vol. 4 (1991), pp. 636-639; Sa'd Ghurāb, "Kutub al-Fatāwā wa-Qīmatuhā al-Ijtimā'iyya," *Ḥawliyyāt al-Jāmi'a al-Tūnisiyya* 16 (1978), p. 72.

[29] Ghurāb, "Kutub al-Fatāwī wa-Qīmatuhā al-'Ijtimā'iyya," p. 72.

[30] A. L. Udovitch, "An Eleventh-Century Islamic Treatise on the Law of the Sea," *Annales Islamologiques* 27 (1993), p. 40; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 13.

[*umma*] and to ensure the credibility and the cohesiveness of the opinions of the jurists. By contrast, there were differences of opinion among the authorities of religious law, both among the various schools and within a single school, with respect to legal manners. This disagreement was called *ikhtilāf*.

In addition to the religious laws, Muslim jurists had to consider local customs [*ʿurf* or *ʿāda*]. In practice, *ʿurf* plays an important part in implementing various aspects of Islamic law [the *fiqh*]. Muslim jurists recognized various kinds of customary practices and incorporated them into the main body of *fiqh*. It is no wonder, then, that substantial parts of their maritime laws and practices were incorporated into Islamic law, and were, in certain situations, regarded as stronger than written contracts: "the case of custom stands in the place of and even supersedes an explicit stipulation."[31] Nonetheless, *ʿurf* could not be incorporated into Islamic law if it contradicted the *sharīʿa*. Furthermore, any jurist or judge giving an opinion on *ʿurf* involving legal issues must also satisfy certain conditions. Foremost among them is that he must be a very careful person, with wide experience; in addition, he must acquire a full knowledge of Islamic law and must know all the times and circumstances in which *ʿurf* may be applied in accordance with the needs of society on the whole.

As an important source of information about the social, economic, and political life of classical Islamic societies, the *fatāwā* also can shed light on Islamic laws and practices pertaining to the sea. A careful scrutiny of hundreds of legal queries allows us not only to reconstruct the maritime customs and regulations but also to trace the development and influence of the pre-Islamic practices on Islamic maritime traditions. However, many questions remain to be answered: What was the influence of pre-Islamic maritime traditions in shaping Muslim sea law? Was the *ʿurf* a stronger component than the *sharīʿa* and if so, why? Why did Muslim jurists practice the method of *qiyās*? And why did the jurists disagree over many legal issues when, on the other hand, they held similar views with regard to specific problems?

To acquire a comprehensive idea of legal issues pertaining to the sea we will survey legal queries from different Islamic law schools of the Sunnīs (Ḥanafī, Shāfiʿī, Ḥanbalī, and Mālikī), Shīʿites, Ẓāhirīs (Andalusian), and Khārijite/Ibāḍī (Omān and Ifrīqiyya). The most important legal details on which this research is based are derived

[31] Udovitch, "An Eleventh-Century Islamic Treatise," p. 41.

from North African and Andalusian Mālikī legal sources. Recently published works of Mālikī authorities provide us with more than three hundred maritime *fatwās*. Therefore, this study will focus on exploring the maritime customs and laws of the Islamic Mediterranean.

Cairo Geniza Documents

Geniza (literally "burial or hiding"), designates a place for storing books, writings, and ritual objects no longer in use, in order to prevent the desecration of the name of God which might be found in them. The word was derived from the Persian *ganj* ("treasury or storehouse"), which means to "conceal," "hide," or "preserve." While Islamic tradition in principle allows for writings bearing the name of God or the names of the prophets to be incinerated, buried, sunk in water, or stored,[32] Jewish law requires that all kinds of sacred articles must be buried in a cemetery, or stored temporarily in a synagogue while they await burial. This tradition goes back to the Talmudic times. The Cairo Geniza chamber, a room hidden behind a wall of the synagogue, seems to have been a permanent burial.

The synagogue in question was the Palestinian synagogue, known today as Ben Ezra. According to historical sources the Coptic patriarch sold a church in 882 C.E., together with some land, to Jews, who converted it into a synagogue. These Jews, however, were probably 'Irāqīs, who had recently immigrated from Babylonia to Egypt and needed a synagogue building.[33] Around 1012 C.E., the Fāṭimid caliph al-Ḥākim bi-Amri Allāh (386-411/996-1021) ordered the destruction of Christian churches and Jewish synagogues. In 1025 C.E., the Palestinian synagogue was rebuilt and it may very well be that a Geniza chamber was attached to it at that time. For the next eight centuries great quantities of manuscripts poured in. The "classical Geniza" manuscripts can be dated between the years 354/965 and 663/1265, *i.e.*, the Fāṭimid-Ayyūbid period, for which we have the largest number of documents. A much smaller collection is dated to the Mamlūk period, particularly the late fifteenth century, when the Spanish inquisition sent a wave of Jewish immigrants flooding

[32] J. Sadan, "Genizah and Genizah-like Practices in Islamic and Jewish Traditions," *Bibliotheca Orientalis* 43 (1986), pp. 36-58.

[33] S. D. Goitein, "Urban Housing in the Fatimid and Ayyubid times," *Studia Islamica* 47 (1978), pp. 5-8.

into Egypt. The quantity of historical fragments increased after ca. 1500.

The Geniza from Fusṭāṭ (Old Cairo) was first discovered by the traveler Simon von Geldern when he visited Cairo in 1753. As early as 1864 Jacob Saphir visited the site but was not permitted to examine its contents because of local superstitions which claimed that disaster would befall anyone who touched the sacred pages. Nevertheless around this time various leaves were extracted without permission and sold to visitors, including, possibly, the Karaite scholar Abraham Firkovitch (1786-1874). Further fragments were bought by a Jewish lawyer and collector Elkan Nathan Adler during his second visit to Cairo in January 1896. In the same year, on March 13, 1896, two Scottish ladies showed Solomon Schechter some leaves from the Cairo Geniza. He recognized in one of them the Hebrew text of Eccelesiasticus (*Book of Wisdom* by Ben Sira, written about 200 B.C.E.). Later, Solomon Schechter was fortunate in finding an ardent supporter in Dr. Charles Taylor, Master of St. John's College in Cambridge, who equipped Schechter with letters of recommendation to the Chief Rabbi and the President of the Jewish community in Cairo. By 1897, Schechter was able to save more than 140,000 pages (we now know), transferring them to Cambridge University Library. The publicity associated with the transfer motivated other Jewish manuscript and book collectors to search for additional buried documents. During 1912-1913, Jacques Mosseri, an Egyptian Jewish businessman, unearthed over 4,000 fragments in the nearby Jewish cemetery. In the end the Geniza papers were acquired by various libraries and museums around the world including the great collections of the University Library in Cambridge, Bodleian Library in Oxford, the British Museum in London, the Jewish Theological Seminary of America in New York, Dropsie College in Philadelphia (now Center for Judaic Studies), the Freer Gallery of Art in Washington, Hungarian Academy of Sciences in Budapest, the Alliance Israélite Universelle in Paris, and the Jewish National Library in Jerusalem, among others.[34]

[34] *Idem, A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* (Berkeley: University of California Press, 1967-1993), vol. 1, pp. 1-28; *idem, Studies in Islamic History and Institutions* (Leiden: Brill, 1968), pp. 279-294; *idem*, "Geniza," *The Encyclopaedia of Islam* vol. 2 (1991), pp. 987-989; Abraham Meir Habermann, "Genizah," *Encyclopaedia Judaica* vol. 7 (1971), pp. 404-408; Neḥemya Allony, "Geniza Etzel Yehudim," *Sinai* 79 (1976), pp. 194-210; *idem*,

The major part of the documentary material of the Cairo Geniza is written in Arabic but using Hebrew characters. The material includes business letters, court records and other legal documents, including writs of divorce, deeds, and parts of marriage contracts. The Geniza brought and is still bringing to light a more comprehensive picture of social, political, and economic life during the high and late classical periods. Its geographical scope extends to North Africa, Sicily and Spain; Palestine, Syria, and ʿIrāq; Yemen and India; and Byzantium.

Of interest to our study are voluminous descriptions of commercial transactions and overseas trade. A document involving an overseas transaction may provide information on a variety of topics: the receipt and dispatch of goods, market prices, the ordering of new commodities, travel expenses, taxation at ports, and, above all, references concerning the legal status of the ship, sailors, merchants, passengers, and commodities on the high seas as well as the ports. In many cases we find references to payment arrangements for shipments. In a broader context, the use of the Geniza documents in the following study will illustrate how Islamic maritime legal theory, as reflected in the *fatāwā* collections, was translated into reality. In addition, when many details are missing in the jurisprudential queries, the accounts from the Geniza, as we shall discover, can fill the gap. Our study, therefore, extends the methodology pioneered by S. D. Goitein and A. L. Udovitch to a new sphere.[35]

"Genizat Qahir u-Veit ha-Knesset Ezra Enam Zehim," *Beit Mikra* 4 (1978), pp. 480-493; Mark Cohen & Yedida Stillmann, "Genizat Qahir u-Minhagei Geniza shel Yehudei ha-Mizraḥ," *Peʿamim* 24 (1985), pp. 3-35; Amitav Ghosh, *In an Antique Land* (New York: A. A. Knopf, 1992), pp. 54-57, 80-95.

[35] For Goitein's works on the Geniza, see the previous note as well as items listed in the Bibliography with the supplement, Robert Attal, *A Bibliography of the Writings of Professor Shelomo Dov Goitein* (Jerusalem: Ben-Zvi Institute, 1975 & the supplement, 1987); Udovitch's findings regarding commercial law are accessible in *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970); *idem*, "Labor Partnerships in Early Islamic Law," *Princeton Near Eastern Studies Paper* 8 (1968); *idem*, "Credits as a Means of Investments in Medieval Islamic Trade," *Princeton Near Eastern Studies Paper* 10 (1969); *idem*, "At the Origin of the Western Commenda: Islam, Israel, Byzantium," *Princeton Near Eastern Studies Paper* 9 (1969); *idem*, "Commercial Techniques in Early Medieval Islamic Trade," in *Islam and the Trade of Asia*, ed. D. S. Richards (Oxford, 1970), pp. 37-62.

Travel Accounts and Navigational Literature

Muslim travelers often traveled for trade or in search of learning. Their travel books are considered a valuable source since they contain much information about the characteristic features of the countries and societies they visited. In many cases the traveler describes the difficulties that he encountered at sea and on land, and the relationships among the crew, merchants, and passengers. Furthermore, an experienced sea traveler like Muḥammad Ibn Jubayr al-Kinānī (539-614/1144-1217), who sailed three times on pilgrimage to Makkah and the Palestine, provides his readers with further technical details about the ship and voyage. For instance, we learn about the distance between various port cities, the taxation system in the port cities of Alexandria and Acre, the architectural design of the ports, the season of navigation, the sea *routes*, the types and capacity of vessels, Islamic and Christian maritime practices, and commercial activity in the Mediterranean during the Crusaders of the twelfth-century.[36] Like his predecessor, the Moroccan traveler Ibn Baṭṭūṭa (704-779/1304-1377), provides us with information concerning important nautical terms and practices in the China Sea, Indian Ocean, and the Red Sea. He gives the technical names of boats, describes how the cargo and passengers were placed aboard, and sheds further light on the crew and their rights and duties.

The best early compilation of sea stories, known as the *Wonders of India* [*ʿAjāʾib al-Hind*], was written in the second half of the tenth century C.E., by a Persian captain and shipmaster Buzurg Ibn Shahriyār. His home was probably Sīrāf, on the north shore of the Persian Gulf. About 953 C.E., he completed a collection of sailors' tales which he had heard in Sīrāf, Omān and elsewhere. Their setting ranges from the Gulf, and nearby Arabia and Persia, to as far as India, Malay, Indonesia and China, and even East Africa. Most of his tales have a solid basis in fact and illustrate the human side of economic history.

Arabic navigational literature, textbooks or manuals composed by practicing seamen for their colleagues, forms a small corpus of highly specialized but extremely interesting writings. All the literature

[36] Amīn T. Ṭībī, "Al-Muṣṭalaḥāt al-Baḥriyya wal-Maʿlūmāt al-Milāḥiyya fī Riḥlat Ibn Jubayr (578-580/ 1183-1185)," *Majallat al-Buḥūth al-Tārīkhiyya* 4 (1982), pp. 327-348.

known at present is concerned with the Indian Ocean and its offshoots, the Red Sea and Persian Gulf; there is no comparable literature extant concerning the Mediterranean. The sum total of our knowledge of Arab navigational theory and practice is from texts dated earlier than the time of Ibn Mājid (840-906/1436-1500) but by his time the nautical science was extremely well developed:

> Many nautical men and others had written on this science and embellished it when they knew nothing about it. But I have written, selected and experimented and worked at it even though we have had at our disposal all that was best of their works and their books. ... But I have corrected their works where there were in error and we have made clear what was muddled in them, and have confirmed where they were not sure, perfected what they left undone, and we have practiced the sea, and all its sciences and related topics ... ."[37]

Along with the principles of navigation, classical Islamic nautical literature dedicated a separate discussion to the topic known as *siyāsāt* (policy and crew management). The term *siyāsāt* signifies maritime rules which the captain and crew should follow prior to the departure, during the voyage, and when the vessel set anchor. Moreover, the *siyāsāt* deal with the recruitment of sailors, provisions against overloading, ballasting, the relationship among the captain, crew members and passengers, the duties and rights of sailors, and the disposition of cargo aboard.[38]

International Commercial and Diplomatic Treaties

These documents contain the most significant historical facts pertaining to the legal status of foreign and enemy alien sailors, merchants, and vessels in Islamic territories. The most problematic aspect of commercial law was the juridical status of the enemy alien merchant in the world of Islam. A foreign merchant could not enter Islamic territory without a safe-conduct pledge [*amān*]. This document defined explicitly and implicitly the merchant's legal status, the rate of taxes he had to pay, the places he could sell his commodities, and the period he could stay. Moreover, international commercial and diplomatic treaties shed further light on the legal status of the high

[37] Shihāb al-Dīn Aḥmad Ibn Mājid Ibn ʿUmar al-Najdī, *Kitāb al-Fawā'id fī Uṣūl ʿIlm al-Baḥr wal-Qawāʿid* (Damascus, 1971), pp. 129-130.

[38] Ibn Mājid, *Al-Fawā'id*, pp. 239-248.

sea, and adjacent (offshore) and inland waters (ports and rivers). A thorough examination of the treaties' articles helps us to grasp how classical Islam perceived the significance of territorial waters, and whether the sovereignty over a limited zone of water off Islamic shores had international recognition. For the purpose of our study, an attempt will be made to scrutinize treaties and truces concluded between the Mamlūks and the European states from the thirteenth to fifteenth centuries C.E.

CHAPTER ONE

THE SHIP, ITS EQUIPMENT AND CAPACITY

Ship Terminology

The classical Geniza manuscripts (965-1265 C.E.), *fatāwā*, historical sources, and travel accounts (850s-1508 C.E.) all use three terms to denote the word 'ship'—*qārib* (boat), *markab* (vessel), and *safīna* (oversized ship). Semantically, the *qārib* refers to a light transport ship in which seafarers transported cargo from oversized ships to the quay,[1] or which functioned as a lifeboat,[2] or as a fishing craft.[3] Occasionally, as we read in a Geniza letter from August 1048, the *qārib*s were used as coastal craft carrying small-sized shipments between local ports.[4] The *markab* refers to smaller types of ships, propelled either by oars or sails, which navigated the high seas, coastlines and inland waters.[5]

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[1] Abū al-Hasan ʿAlī Ibn ʿUthmān al-Makhzūmī, *Kitāb al-Minhāj fī ʿIlm Kharāj Miṣr*, ed. by Claude Cahen and Yūsuf Rāghib (Caire: Institut Français d'Archéologie Orientale, 1986), pp. 20, 25; Abū al-ʿAbbās Aḥmad Ibn Yaḥyā al-Wansharīsī, *Al-Miʿyār al-Muʿrib wal-Jāmiʿ al-Mughrib ʿan Fatāwā Ahl Ifrīqiyya wal-Andalus wal-Maghrib* (Beirut: Dār al-Gharb al-Islāmī, 1401/1981), vol. 8, p. 207; Darwīsh al-Nukhaylī, *Al-Sufun al-Islāmiyya ʿalā Ḥurūf al-Muʿjam* (Alexandria: Alexandria University Press, 1974) p. 22; George Fadlo Hourani, *Arab Seafaring in the Indian Ocean in Ancient and Early Medieval Times* (Princeton: Princeton University Press, 1951), p. 99; Goitein, *A Mediterranean Society*, vol. 1, p. 306; Hady Roger Idris "Commerce Maritime et Kirāḍ en Berbérie Orientale: D'après un Recueil Inédit de Fatwās Médiévales," *Journal of the Economic and Social History of the Orient* 4 (1961), pp. 234, 238. I would like to thank Mr. Naïm Antaki for so generously translating this important article for me from French.

[2] Muḥammad Ibn Aḥmad al-Minhājī, *Jawāhir al-ʿUqūd wa-Muʿīn al-Quḍāt wal-Muwaqqiʿīn wal-Shuhūd* (Cairo, 1374/1955), vol. 1, pp. 94-95; Muḥammad Ibn ʿAbd Allāh Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa* (Cairo, 1938), vol. 2, p. 222; Buzurg Ibn Shahriyār, *Kitāb ʿAjāʾib al-Hind*, ed. and compiled by Yousef al-Sharouni (London: Riad el-Rayyis, 1989), pp. 70, 126, 137; Ibn Mājid, *Al-Fawāʾid*, p. 340; Hourani, *Arab Seafaring in the Indian Ocean*, p. 99; Goitein, *Letters of Medieval Jewish Traders* (Princeton: Princeton University Press, 1973), p. 63.

[3] Muḥammad Ibn Aḥmad Ibn Bassām al-Muḥtasib, *Anīs al-Jalīs fī Akhbār Tinnīs*, in *Majallat al-Majmaʿ al-ʿIlmī al-ʿIrāqī* 14 (1967), p. 186.

[4] Menahem Ben-Sasson, *Yehudei Sitzilya (1068-825)* (Jerusalem: Ben-Zvi Institute, 1991) p. 501, doc. TS 20.69, ll. 4-6.

[5] TS 13 J 19, f. 29, l. 14; TS 10 J 9, f. 5, l. 10; TS 8 J 16, f. 31, ll. 9, 16, verso, l. 8; and TS 20.69, l. 14. For the meaning of these and other abbreviations see the list of published and unpublished Geniza texts in the Bibliography.

The *safīna* and *fulk* are the largest types of seagoing vessels, propelled exclusively by sail.[6] However, it is possible that some of the variations were linguistic rather than real, though professional sailors of the classical Islamic period were able to appreciate the actual sailing characteristics of one type of vessel against another.

The chief dispute among specialists in maritime history revolves around the classification of ships into seafaring and riverfaring categories. Classical sources, especially those from the 1400s, confirm this distinction: a seafaring vessel would not venture onto a river, and a riverboat would avoid the high seas, or so the classical historians claimed.[7] However, neither the Geniza records nor most other historical sources before 1400 evince any clear distinction between seagoing carriers and river craft.

Some vessels that came from the sea continued their voyage on inland waters, and vice versa.[8] This statement does not imply that every vessel or pilot was capable of navigating the Nile. Sea-to-river navigation was generally restricted to barges and small crafts, and to pilots with sufficient nautical knowledge to sail on the high seas and on rivers alike.[9] Entering the Nile through one or another of its estuaries was extremely hazardous for an unskilled pilot or an unprepared craft. Despite the maritime supremacy of the Crusaders during the twelfth and thirteenth centuries, their attempts to capture the Egyptian capital Fusṭāṭ/Cairo failed owing to the structural de-

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[6] Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, p. 96.

[7] Muḥammad Ibn al-Qāsim al-Nuwayrī, *Kitāb al-Ilmām bil-Iʿlām fi-mā Jarat bi-hi al-Aḥkām wal-Umūr al-Muqḍiya fi Waqaʿt al-Iskandariyya* (Hyderabad: Osmania Oriental Publications Bureau, Osmania University, 1969), vol. 1, p. 171; vol. 2, pp. 98, 233-235, 249-251; vol. 3, p. 235; vol. 5, pp. 84, 250, 375; Taqiyy al-Dīn Aḥmad Ibn ʿAlī al-Maqrīzī, *Al-Mawāʿiẓ wal-Iʿtibār fi Dhikr al-Khiṭaṭ wal-Āthār* (Cairo: Mu'assasat al-Ḥābī, 1967), vol. 2, pp. 143, 145, 150-151.

[8] Goitein, *Studies in Islamic History and Institutions*, p. 304; Abraham L. Udovitch, "Time, the Sea and Society: Duration of Commercial Voyages on the Southern Shores of the Mediterranean during the High Middle Ages," in *La Navigazione Mediterranea nell'alto Medioevo* (Spoleto: Centro Italiano di Studi sull'alto Medioevo, 1978), pp. 521-522; Ben-Sasson, *Yehudei Sitzilya*, p. 536, doc. TS 8 J 20, f. 2, l. 11, p. 540, doc. TS 13 J 16, f. 19, ll. 16-17; Al-Asʿad Abū al-Makārim Ibn Mammātī, *Qawānīn al-Dawāwīn*, ed. by ʿAzīz Suryal ʿAtiya (Cairo, 1943), pp. 339-340; Mokhtār ʿAbbādy and Elsayyed ʿAbd al-ʿAzīz Sālem, *Tārīkh al-Baḥriyya al-Islāmiyya fi Miṣr wal-Shām* (Beirut: Dār al-Nahḍa al-ʿArabiyya, 1981), pp. 145-147; Ṣāber Diyāb, "Dirāsāt fi ʿĀlam al-Baḥr al-Mutawassiṭ fi al-ʿUṣūr al-Wusṭā," *Al-Majalla al-Tārīkhiyya al-Miṣriyya* 24 (1977), pp. 73-77.

[9] Goitein, *A Mediterranean Society*, vol. 1, p. 296; Udovitch, "Time, the Sea and Society," pp. 521-522.

sign of Crusader vessels and the unfamiliarity of their pilots and sailors with the Nile.[10]

The Geniza documents suggest that merchants preferred to use the same vessel when transporting goods from an inland port to a faraway coastal destination, whereas other sources indicate the opposite: that merchants would charter separate boats for river and sea travel, rather than employ a single design of dual capability.

Why, however, do the Geniza documents differ from other classical sources in that they rarely mention riverboats? The scarcity of references to riverboats in the Geniza may have resulted from the Geniza merchants' unique preference for transporting shipments from inland ports directly to Mediterranean harbors, without making any intermediate stopovers. Various factors made the transfer of cargo from riverboats to larger ships undesirable to the merchants of the classical Geniza.

First, the transfer of cargo from a river craft to a seagoing ship would cause merchants to incur additional expenses for the hiring of porters, sailors, shipowners, and for port fees—especially if the ship had to make frequent stops in multiple harbors.[11] Transporting cargo in a single vessel from the inland port of origin to the coastal destination usually proved cheaper. Second, the merchant might incur financial losses if part of the cargo were damaged or stolen during transshipping. Third, he might miss the season of navigation, particularly when the transfer of cargo took place at the end of the sailing season. A natural disaster might delay the voyage until the beginning of the next sailing season.[12]

Al-Nuwayrī and al-Maqrīzī describe the types of vessels used in Egypt, dividing the ships into two groups: warships, equipped with fighting men and weapons for waging wars against the enemy,[13] and

[10] ʿAbbādy, *Tārīkh al-Baḥriyya al-Islāmiyya fī Miṣr wal-Shām*, pp. 229-242.

[11] ʿĀmir Ibn ʿAlī al-Shammākhī, *Al-Iḍāḥ* (Beirut, 1970) vol. 3, pp. 580-581; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 300; Goitein, *A Mediterranean Society*, vol. 1, p. 319.

[12] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, p. 78; Kindī, *Al-Muṣannaf*, vol. 21, p. 153; Khamīs Ibn Saʿīd Ibn ʿAlī Ibn Masʿūd al-Rustāqī, *Manhaj al-Ṭālibīn wa-Balāgh al-Rāghibīn* (Masqaṭ: Wizārat al-Turāth al-Qawmī wal-Thaqāfa, 1983), vol. 12, p. 295; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 44.

[13] With the exception of certain types of vessels, there was not a structural differentiation between ships designed for fighting and those intended only for carrying cargoes. In days of peace and political tranquility warships [*ḥarbīs*] were put in civil service. The tendency toward building dual-use ships may have resulted from the commercial revolution during the eleventh century and the involvement of the governmental circle in shipping business. We frequently read in the Geniza records

commercial ships. They further subdivide commercial ships navigating the Nile into three subcategories. First, boats known as *al-nīliyya* or *al-nahriyya* sailed primarily on rivers and artificial channels; such vessels were used to transport crops and cargo between Upper and Lower Egypt, and between Qulzum (Clysma) and Fusṭāṭ/Cairo.[14] Second, sea-to-river vessels were propelled by both oars and sails and were adapted technically to sail under different conditions. These vessels transported cargo exclusively from inland cities along the Nile to the seaport cities of the southern and eastern Mediterranean.[15] The final category consisted of ferries that carried passengers down the Nile for pleasure and entertainment, which are refered to as *marākib al-nuzha wal-tafarruj*.[16]

Islamic legal sources confirm the classification of ships outlined by al-Nuwayrī and al-Maqrīzī. In his famous work *Jawāhir al-ʿUqūd* (*The Principals of Formulating Contracts*), al-Minhājī (d. 880/1475) distinguishes between seagoing and river craft (*marākib al-baḥr al-milḥ aw al-ʿadhib*). He points out that the design and structure of coastal craft and seagoing vessels differs from those restricted to river voyages.[17]

In brief, the types of vessels that were in commercial service can be theoretically classified into three categories: riverboats which were used only on inland waters, coasters which sailed along the coasts and on inland rivers alike, and large-sized vessels which anchored only in seaports. In certain situations, large seafaring vessels even had to anchor some distance from the shore when a given harbor lacked deepwater docks.[18]

Despite the attempts of classical historians in later years to impose a classification scheme upon early medieval ships, the Geniza merchants themselves remained seemingly oblivious to such distinctions. Merchants would sail riverboats—which supposedly were to remain inland—as far east as the port cities of Palestine, Lebanon, and Syria,

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that in wartime commercial ships were seized for the service of military fleet to carry religious warriors and logistic provisions (see Chapter Five, pp. 143-146).

[14] Nuwayrī, *Al-Ilmām*, vol. 2, pp. 249-250; Maqrīzī, *Al-Khiṭaṭ*, vol. 2, pp. 143, 189.

[15] Ṣafāʾ ʿAbd al-Fattāḥ, *Al-Mawānīʾ wal-Thughūr al-Miṣriyya min al-Fatḥ al-Islāmī ḥattā Nihāyat al-ʿAṣr al-Fāṭimī* (Cairo: Dār al-Fikr al-ʿArabī, 1986), pp. 160, 173; Rāshid al-Barrāwī, *Ḥālat Miṣr al-Iqtiṣādiyya fī ʿAhd al-Fāṭimiyyīn* (Cairo: Maktabat al-Nahḍa al-Miṣriyya, 1948), p. 282.

[16] Maqrīzī, *Al-Khiṭaṭ*, vol. 2, pp. 143, 145, 150-151.

[17] Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, pp. 94-96.

[18] Muḥammad Ibn Aḥmad Ibn Jubayr, *Riḥlat Ibn Jubayr* (Beirut: Dār Ṣāder, 1379/1959), pp. 277-278.

and as far west as the Maghrib, Libya, and Tunisia.[19] Thus, the Geniza documents and the odd historical commentator made no clear-cut distinction between seagoing and rivergoing vessels.

Finally, as many Geniza letters show, in a state of war the government would seize commercial ships for military operations. These vessels were used either to furnish logistical support or to carry soldiers.[20] From this fact we can infer that, with the exception of certain types of warships, the technology behind military and commercial shipbuilding was basically similar.

Names of Vessels

Unlike the medieval European sailing vessels, which apparently did not have names until nearly the thirteenth century,[21] Islamic legal sources and travel accounts prove that ships had names as far back as the ninth century. An early formula for composing sales contracts, dating to the late ninth and early tenth centuries, rules that the purchaser and seller were at the beginning required to indicate the ship's name followed by its full technical description.[22] Conversely, a late formula from the fifteenth century stipulates that both parties involved in the transaction should conclude the contract by indicating the name of the purchased vessel [*wa-yukmil al-awṣāf ʿalā lughat ahl kull baḥr, muʿtamidan ʿalā waṣfihim fī tasmiyat dhālik al-mabīʿ*].[23] Otherwise, the sales contract might be regarded as invalid. After completing the sales transaction, the new proprietor of the purchased vessel could change its name if he wished.

Names of vessels were typically mentioned in ship-leasing contracts. Including the ship's name specified the exact vessel used to transport the cargo and ensured that the lessor would not carry the shipment aboard another vessel. The Islamic treatise on the law of

[19] Goitein, *A Mediterranean Society*, vol. 1, p. 321; Moshe Gil, *Eretz Yisrael ba-Tequfa ha-Muslimit ha-Rishona (634-1099)* (Tel Aviv: Tel Aviv University, 1983), vol. 3, pp. 267-271, doc. TS 8 J 19, f. 27, l. 5.

[20] Udovitch, "Time, the Sea and Society," pp. 522-523; TS 10 J 13, f. 21 (margin); TS 13 J 27, f. 9, ll. 11-13; Bodl. MS Heb. c 50, f. 19; Bodl. MS Heb. b 3 (Cat. 2806), f. 26, ll. 13-14.

[21] Ashburner, *The Rhodian Sea-Law*, p. clv; Goitein, *A Mediterranean Society*, vol. 1, p. 480, note 23.

[22] Aḥmad Ibn Muḥammad al-Ṭaḥāwī, *Kitāb al-Shurūṭ al-Kabīr* (ed. Jeanette A. Wakin, Albany, 1972), p. 106.

[23] Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, p. 95.

the sea composed by the Mālikī jurist Muḥammad Ibn ʿUmar Ibn Yūsuf Ibn ʿĀmir al-Kinānī provides that the ship's name must be specified as a leasing agreement is concluded between the lessee and lessor.[24] This stipulation was maintained by the great majority of Muslim law-doctors.[25] Ibn Rushd considers a leasing contract invalid if the name of the chartered vessel is not included.[26] Likewise, the Shāfiʿī jurist al-Minhājī holds a similar point of view.[27]

Whereas the Arabic travel accounts and historical references rarely mention the names of seagoing and river vessels,[28] many letters about commerce from the Geniza do place great emphasis on a ship's name. Normally, the ships were called by the names of their proprietors (or their family names), or, less frequently, by that of their captains. Thus a merchant or his agent would write to his correspondent: "I loaded fifteen *ziqqs* of oil in Ibn al-Shubkī's ship," or: "the ship of Ibn ʿAqīl entered the port of Sfax," or: "I sent you a copy with Salāma Ibn Khalīl who traveled aboard the ship of al-Baʿshūshī, and another copy in the ship of al-Andalusī," or: "I sent in Mufarrij and in Ibn Naʿīm."[29] Naming the ships after the name of their proprietors was an indication of ownership. In many cases commercial ships would bear individual names referring to some characteristic decoration, such as: "*qārib Abū al-Ward raʾīsahu Hajjās*" (that with the rose whose captain was Hajjās)[30] or: "*markab al-sulṭān al-maʿrūf bi-Abī al-*

[24] Ṭāher (ed.) *Kitāb Akriyat al-Sufun*, p. 17.

[25] Hady Roger Idris, *La Berbérie Orientale sous les Ẓirides Xe-XIIe Siècle*, Translated by Ḥamādī Sāḥlī, (Beirut: Dār al-Gharb al-Islāmī, 1992), vol. 2, p. 284.

[26] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 8, pp. 80-81.

[27] Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, pp. 293-294.

[28] ʿAlī Ibn al-Ḥussayn al-Masʿūdī, *Murūj al-Dhahab wa-Maʿādin al-Jawhar* (Beirut: Dār al-Andalus, 1965), vol. 1, p. 123; Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa*, vol. 2, p. 222; Nukhaylī, *Al-Sufun al-Islāmiyya*, pp. 21, 26; Nadavī, "Arab Navigation," p. 409.

[29] Goitein, *A Mediterranean Society*, vol. 1, pp. 302, 312; *idem*, *Letters*, pp. 103, 319-322; *idem*, "Mishar ha-Yehudim ba-Yam ha-Tikhon bi-Tehilat ha-Me'ah ha-Aḥat ʿEsreh," *Tarbiẓ* 36 (1967), p. 383; *Tarbiẓ* 37 (1967), p. 51; *idem*, "Ha-Parasha ha-Aḥarona be-Ḥayyei Rabbenu Judah ha-Levi," *Tarbiẓ* 24 (1955), p. 43, doc. TS 13 J 15, f. 20, ll. 30-31; Udovitch, "Time, the Sea and Society," pp. 542-543; Gil, *Eretz Yisrael*, vol. 3, pp. 264-265, 271-273; Ben-Sasson, *Yehudei Sitzilya*, p. 539, doc. TS 13 J 16, f. 19, ll. 8, 12, p. 544, doc. ENA 2727.38, ll. 4-5, p. 569, doc. CUL OR. 1080 J 13, ll. 5-15; TS 8 J 18, f. 14, l. 7; TS 10 J 11, f. 23, ll. 2-4; TS 10 J 16, f. 17, ll. 18-19; TS 10 J 19, f. 19, ll. 8-9; TS 12.335v, l. 10; TS 13 J 16, f. 23, ll. 16-17; TS 13 J 28, f. 2, l. 9; TS 13 J 17, f. 3, ll. 15-17; TS 13 J 29, f. 2, l. 4; TS 16.163v, ll. 6-7; TS 20.69, l. 29; Bodl. MS Heb. a 3, f. 13, l. 38; Bodl. MS Heb. c 28, f. 61, ll. 6, 12; Bodl. MS Heb. d 65, f. 17, ll. 4-5, 14, 16; Bodl. MS Heb. d 66, f. 15, ll. 11-22; and Mosseri IV, 46.1, l. 9.

[30] TS 13 J 16, f. 19, l. 16.

Dhahab" (the ship of the *sulṭān* called "the golden")[31] or: "*al-mubārak*" (blessed), or: "*al-maymūn*" (the auspicious).[32] In addition, names were often given to individual ships based upon the travelers' experience with them, for example "*al-dawwāma*" (the spinning top), or "*al-ʿarūs*" (the bride).[33] Occasionally they were given names according to their destination or port of origin.

Besides the legal importance of indicating the ships' names in the sales contracts, commercial carriers had to be registered by the port superintendent when they anchored at the harbor. Governmental officials at the port registered the name of each incoming or departing vessel, its port of origin, day of arrival, the captain's name, types of commodities subjected to tariff, number of passengers on board, and their names and nationalities.[34] By identifying the ship's name, officials could often utilize their records to recognize suspicious travelers.[35]

Capacity and Provisions to Insure Safety

A part of the *muḥtasib*'s (market superintendent) duties was to oversee the construction of vessels at the *dār al-ṣināʿa* (the shipyard). His main task was to insure the shipwrights'[36] observance of technical stand-

[31] TS 8 J 28, f. 9, l. 3.

[32] TS 13 J 29, f. 1, l. 20; TS Box J 1, f. 54d, l. 27.

[33] TS 20.69, l. 21; Goitein, *A Mediterranean Society*, vol. 1, p. 312.

[34] TS 16.215v, ll. 3-4 (*India Book*, letter 187); Muḥammad Ibn ʿAbd al-Munʿim al-Ḥimyarī, *Kitāb al-Rawḍ al-Miʿṭār fi Khabar al-Aqṭār* (Beirut: Muʾassasat Nāṣir lil-Thaqāfa, 1980), p. 80; Ibn Jubayr, *Riḥlat Ibn Jubayr*, p. 13; Makhzūmī, *Kharāj Miṣr*, p. 49; Claude Cahen, "Douanes et Commerce dans les Ports Méditerranéens de l'Egypte Médiévale d'après le Minhādj d'al-Makhzūmī," *Journal of the Economic and Social History of the Orient* 7 (1964), p. 303.

[35] TS 16.215v., ll. 2-5.

[36] Ibn Bassām, *Nihāyat al-Rutba fi Ṭalab al-Ḥisba* (Baghdād: Maṭbaʿat al-Maʿārif, 1968), p. 148. Similar to thirteenth-century European guilds of professionals, the shipwrights in the Near East were organized in loose bands which determined the rights and the standard wages of shipwrights per day. However, every member would collaborate and follow the rules of the shipwrights' band. Ibn Bassām writes: "because they are a band, none of them differs in opinion from each other" [*li-annahum ʿuṣba lā yukhālif baʿḍahum baʿḍā*]." Modern studies indicate that shipowners, navigators, and shipwrights in the Indian Ocean were likely to constitute a band of their own; see K. N. Chaudhuri, *Trade and Civilization in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (Cambridge: Cambridge University Press, 1993), p. 123. Goitein, *A Mediterranean Society*, vol. 1, p. 83, points out that members of one craft, even of different faiths, were connected with one another in many ways, such

ards and prevent them from using inferior and inadequate raw materials. The exacting and thorough inspections were intended "to avoid human and financial losses [*yurāʿā al-ḍarar bil-nās wa-bi-amwālihim*]." Therefore, whoever violated these regulations was to be punished. While the ship was still in the yard, a complete technical inspection was carried out by the *muḥtasib* and the captain. Most importantly, the captain required the *technical* crew to inspect the hull, tackle, and nautical instruments while at sea.[37] Islamic law decrees that if a technical defect is discovered in the ship, the sailors as well as the lessees are not required to honor the leasing contract with the shipowner.[38]

In deciding which ship to choose for a journey, passengers had to consider two cardinal principles: transportation charges and the seaworthiness of the vessel. The comical and light-hearted names given to vessels and the frequent mention of certain groups of shipowners in the Geniza prove that merchants were well aware of the quality of the sea-carriers. In many documents the writers warned their proxies or master-merchants not to sail in crafts that had suffered serious

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as geographical concentration, mutual financial help, formal partnership, and organized corporations of craftsmen.

Likewise some contemporary studies suggest that the sailors and *muʿallims* formed some sort of guild and their duties were sharply defined as a legal protection not only for the shipowner, but for themselves. As the shipping season approached, a great crowd of sailors, pilots, and captains gathered to offer their services to the leading merchants. A confirmation of the existence of such a union, or guild, is given by Buzurg Ibn Shahriyār, who talks of a fraternity of pilots enslaved by their duties: "All of us captains of the ships ... [*wa-naḥnu maʿshar rubbāniyyat al-sufun* ...]"; see Buzurg Ibn Shahriyār, *ʿAjāʾib al-Hind*, p. 58; G. R. Tibbetts, *Arab Navigation in the Indian Ocean before the Coming of the Portuguese* (London, 1971), p. 61; Chaudhuri, *Trade and Civilization*, p. 125.

Regarding the Islamic Mediterranean, historical sources point out that the earliest Islamic maritime union (band) was established during the last third of the third Islamic century. The Yemeni sailors who immigrated to Andalusia settled in Bajjāna (Pechina) where they organized and initiated maritime attacks on Christian and hostile ships. For further details about the sailors' union of Pechina, see Iḥsān ʿAbbās, "Ittiḥād al-Baḥriyyīn fī Bajjāna bil-Andalus," *Al-Abḥāth* 23 (1970), pp. 3-14.

[37] Ibn Bassām, *Nihāyat al-Rutba*, pp. 148, 157; ʿAbd al-Laṭīf al-Baghdādī, *Al-Ifāda wal-Iʿtibār*, translated into English and edited by Kamal H. Zand et al. (London: George Allen & Unwin, 1965), pp. 176-177; Aḥmad Ṭāher Ḥasanayn, *Al-Ḥisba fi al-Islām* (Cairo, 1990), p. 37; Nukhaylī, *Al-Sufun al-Islāmiyya*, p. 29; Ibn Mājid, *Al-Fawāʾid*, p. 239: "Inspect the whole hull of the ship while it is on land/dockyard and write down all its imperfections [*taʾammal al-safina wa-hiya fawqa al-arḍ wʾaktub jamīʿ khalaluhā*]." As regards inspection during the maritime venture he writes (p. 241): "You must inspect the equipment of the ship every once in a while [*wa-taʾammal jamīʿ ʾālāt al-safina ... fi kull ḥīn wa-sāʿa*]."

[38] Kindī, *Al-Muṣannaf*, vol. 21, pp. 153-154.

damage, but rather recommended traveling in *new* vessels.[39] Not only were technical problems less likely to arise in a new vessel during the voyage, but Islamic law, like the Rhodian Sea Law,[40] distinguished between the legal status of new and old ships. By the inclusion of a vessel within the calculation of the *general average*, the owner of a new vessel would pay a higher indemnification than the owner of an old ship.[41]

Several methods of calculating the capacity of the ship were employed in classical Islam. Commercial ships were rated either in *irdabb*,[42] quantity of particular commodities, or total number of passengers or animals.[43] When the ship was loaded and ready to sail, an official examination to prevent overloading was requested by the *muḥtasib* and captain.[44] The procedure of examining the weight and bulk of cargo is well documented in Ibn Bassām's book *Nihāyat al-Rutba fī Ṭalab al-Ḥisba*: "The ship can be freighted with cargo as long

[39] Goitein, *Letters*, pp. 105-106; TS 12.250, l. 19: "load the cargo in the newest vessel [*wassiqhā fī arwaj markab*]"; TS 10 J 19, f. 19: "ten out of your thirty bales were shipped to al-Mahdiyya aboard the new ship of Ḥussayn al-Lakkī"; TS 16.179, l. 41, warning of bad ship: "and I told him not travel aboard this vessel [*anī qultu lahu lā tarkab fī hādhā al-markab*]"; *idem*, "Ha-Parasha ha-Aḥarona," p. 43, doc. TS 13, J 15, f. 20, ll. 30-31: "When a group of our friends arrived on board the vessel of the army commander at Alexanderia, they informed us that our Rabbi Judah ha-Levi is arriving aboard the new vessel of the Sulṭān [*waṣalū qawm min aṣḥābinā fī markab al-qā'id wa-akhbarū bi-anna Rabbenu Judah ha-Levi yaṣil fī markab al-jadīd al-ladhī lil-Sulṭān*]"; *idem*, "Mishar ha-Yehudim," p. 183, doc. TS 12.391, l. 5.

[40] Ashburner, *The Rhodian Sea-Law*, p. cliii.

[41] See Chapter Three, pp. 102-104.

[42] Ibn Mammātī, *Qawānīn al-Dawāwīn*, pp. 339-340; Nukhaylī, *Al-Sufun al-Islāmiyya*, pp. 14-17, 22, 46, 78-81, 130-131; Ḥabīb al-Zayyāt, "Mu'jam al-Marākib wal-Sufun fī al-Islām," *Al-Mashriq* 43 (1949), p. 324.

[43] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 1, pp. 444-445; vol. 3, pp. 434-435; *idem*, *Fatāwā Ibn Rushd* (Beirut: Dār al-Gharb al-Islāmī, 1987), vol. 3, 1325-1327; Muḥammad Ibn Muḥammad Ibn al-Ukhuwwa, *Kitāb Ma'ālim al-Qurbā fī Aḥkām al-Ḥisba* (Cairo: Al-Hay'a al-Miṣriyya al-'Āmma lil-Kitāb,1976), p. 324; Ibn Bassām al-Muḥtasib, *Anīs al-Jalīs*, p. 186; Jamāl al-Dīn Muḥammad Ibn Muḥammad Ibn Ẓuhayra, *Al-Faḍā'il al-Bāhira fī Maḥāsin Miṣr wal-Qāhira* (Cairo: Dār al-Kutub, 1969), p. 13; Ḥasanayn, *Al-Ḥisba fī al-Islām*, pp. 37-38; Zayyāt, "Mu'jam al-Marākib wal-Sufun fī al-Islām," pp. 340, 347. Merchant ships could transport 300 to 500 passengers. See Goitein, *A Mediterranean Society*, vol. 1, p. 215; Udovitch, "Time, the Sea and Society," p. 522; Simḥa Assaf, *Meqorot u-Meḥqarim be-Toldot Yisrael* (Jerusalem, 1946), pp. 133-134; Ben-Sasson, *Yehudei Sitzilya*, pp. 544-545.

[44] Maqrīzī, *Al-Khiṭaṭ*, vol. 1, p. 463: "*yulzam ru'asā' al-marākib an lā yaḥmilū akthar min wisq al-salāma*"; Ibn Mājid, *Al-Fawā'id*, p. 29: "You [the captain] should not load the ship more than its actual capacity [*wa-lā yashḥanuhā illā al-'āda*]." In p. 242 he adds: "Never overload the ship [*wa-ikhtaṣir al-shaḥna*]."

as the waterline alongside the outer hull is visible."[45] In accordance with this guideline, the waterline mark along the outer hull must not lie more than a certain depth below the waterline. The provision against overloading was designated to prevent not only sinking but also the overexertion of the rowers.[46]

Arguments would emerge among merchants when overloading of a vessel was discernible. As long as the loading arrangement was known, the parties involved would comply with the principle "first in last out." In other words, the last merchant to load was the first to be required to unload his cargo. If the loading order was unknown, the unloading would be equally divided among all merchants.[47] Furthermore, three possible rules could be invoked when a merchant violated the regulations against overloading. First, the violator was liable for the loss and damage to the cargo, and he alone therefore would have to indemnify the owners. Alternatively, the loss would be distributed proportionally among the lessees (merchants), *i.e.*, with due application of the rules of *general average*. Lastly, the violator would have to indemnify the merchants half the amount of the actual value of the cargo for damages.[48] One may assume that the shipowner was not liable in case of loss or damage if guidelines against overloading were transgressed without his knowledge.

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[45] Ibn Bassām, *Nihāyat al-Rutba*, p. 157: [*wa yanbaghī an takūn awsāq al-marākib khafīfatan ḥattā takūn nawāḥīhā ʿalā wajhi al-mā' ẓahiratan ghayra ghā'iba fīhi*]. An identical guideline was followed by the Byzantines, see Ashburner, *The Rhodian Sea-Law*, p. clviii.

[46] Ibn al-Ukhuwwa, *Maʿālim al-Qurbā*, p. 324: "They shall be compelled not to overload their vessels inordinately for fear of sinking and they shall not set out during a gale." Ibn ʿAbdūn, *Seville Musulmane au debut du XIIe Siècle*, Traduit avec une introduction et des notes par: E. Lévi-Provençal (Paris, 1947), pp. 63-64: "We must order the sailors [who are in charge of crossing the Guadalquivir] to make the shipment light, since it would cause danger and death, particularly during the days when the wind is strong. Also, it is a bad practice to establish shifts among the seamen and porters to load the ship because this might result in overloading the ship. ... The shipowner should not overcharge the vessel and force the passengers to row." ʿAbd al-Raḥmān al-Fāsī, *Khiṭṭat al-Ḥisba fī al-Naẓar wal-Taṭbīq wal-Tadwīn* (Casablanca, 1984), pp. 148-151; Ibn Bassām, *Nihāyat al-Rutba*, p. 148; Qāḍī Abū al-Faḍl ʿIyāḍ Ibn Mūsā al-Yaḥṣubī, *Madhāhib al-Ḥukkām fī Nawāzil al-Aḥkām* (Beirut: Dār al-Gharb al-Islāmī, 1990), pp. 235-236; Maqrīzī, *Al-Khiṭaṭ*, vol. 1, p. 463; Ḥasanayn, *Al-Ḥisba fī al-Islām*, pp. 37-38; Al-Sayyed ʿArīnī, "Al-Ḥisba wal-Muḥtasibūn fī Miṣr," *Al-Majalla al-Tārīkhiyya al-Miṣriyya* 3 (1950) p. 158; ʿAbd al-Ḥasīb Raḍwān, *Dirāsāt fī al-Ḥisba min al-Nāḥiyatayn al-Tārīkhiyya wal-Fiqhiyya* (Casablanca, 1990), p. 42; ʿAbd al-Fattāḥ, *Al-Mawāni' wal-Thughūr al-Miṣriyya*, p. 113.

[47] Wansharīsī, *Al-Miʿyār*, vol. 8, p. 307.

[48] Abū Zakariyyā Yaḥyā Ibn Sharaf al-Dimashqī al-Nawawī, *Rawḍat al-Ṭālibīn* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1992), vol. 7, p. 190.

In a Geniza letter from the early eleventh century C.E., the sender complains about the shipmasters who refrained from shipping bales that had been recovered after being thrown overboard for fear they would overload and endanger their vessels: "By God, my master, when I recovered the sixteen bales [which were thrown overboard from Sicilian ships], I suffered harder than if I were to have loaded a hundred bales ... and whoever I asked to transport them turned me down."[49] The rule against salvaging flotsam that may cause overloading is well documented by al-Qāḍī ʿIyāḍ (476-544/1083-1149): "They [*i.e.*, merchants and crew members] are not allowed to salvage cargo that is found on the surface of the water if such an act would overload and endanger their vessel."[50] Those involved in overloading the vessel would be solely responsible for the losses.[51]

Applying these laws to Muslim warships, Muslim jurists advised soldiers not to overload their vessels with booty. The total volume and weight of booty should not exceed the actual capacity of the ship.[52]

Lifeboats

Goitein, the most authoritative scholar of the Geniza letters, dismisses the existence of lifeboats on board seagoing vessels in the Mediterranean: "Thus far, no references have been found in the Geniza records to lifeboats carried on board, and I am inclined to believe that they were not in use at that time."[53] However, this hypothesis seems unlikely. Other Geniza documents,[54] jurisprudential ref-

[49] Goitein, "Miṣḥar ha-Yehudim," pp. 378-379, doc. TS 10 J 19, f. 19: "*wa-bi-Allāh yā mawlāy anī qāsayt fī hādhihi al-16 ʿidl al-ladhī unzilū min [al]marākib mimmā law kānat 100 ʿidl lamā taʿibtu nisf al-taʿabi ... wa-kull man namḍī ilayhi nas'alahu laysa ya'khudhuhā minnī.*"

[50] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, pp. 235-236

[51] Abū Jaʿfar Muḥammad Ibn al-Ḥassan Ibn ʿAlī al-Ṭūsī, *Tahdhīb al-Aḥkām* (Al-Najaf: Dār al-Kutub al-Islāmiyya, 1959), vol. 7, pp. 216-217. For safety regulations in medieval Italian city-states, see J. E. Dotson, "Safety Regulations for Galleys in Mid-Fourteenth Century Genoa: Some Thoughts on Medieval Risk Management," *Journal of Medieval History* 20 (1994), pp. 327-336; *idem*, "A Problem of Cotton and Lead in Medieval Italian Shipping," *Speculum* 57 (1982), pp. 52-62.

[52] Shaybānī, *Al-Siyar al-Kabīr*, p. 82; Ardabīlī, *Al-Anwār*, vol. 2. p. 289; Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 235.

[53] Goitein, *Studies in Islamic History*, p. 305; *idem*, *A Mediterranean Society*, vol. 1, p. 306.

[54] Assaf, *Meqorot u-Meḥqarim*, p. 134, doc. TS 16.54, l. 58; TS 8 J 19, f. 25, l. 10.

erences,[55] and travel accounts from the tenth and twelfth centuries C.E. indicate that large-sized seagoing crafts carried lifeboats aboard or were accompanied by small boats.[56] From the legal point of view, the infrequent mention of lifeboats in the *fatāwā* collections may have resulted from the fact that Islamic law does not insist that shipowners equip their vessels with such crafts. Nevertheless, maritime practice in the Mediterranean and Red Seas suggests that equipping commercial carriers with lifeboats was common.

On Sunday, November 11, 1184 C.E., when the Genoese vessel that carried Ibn Jubayr encountered inclement weather and rough seas, a lifeboat was lowered and some passengers were transferred to it:

> We, meanwhile, were gazing at the nearby shore, hesitating between throwing ourselves in to swim and awaiting, it might be, relief with the dawn from God. We resolved to stay. The sailors lowered the *'ushārī* [57] into the sea to remove the most important of their men, women, and effects.[58]

This quotation should not be interpreted to mean that only Christian vessels were equipped with lifeboats. In a lengthy letter written in eloquent Hebrew, a traveler vividly describes how the vessel which he was taking from Tripoli (Libya) to the Maghrib foundered after one day of sailing:

> I departed on a ship from Tripoli on Tuesday 12th of *Siwan* [the eighth month in the Jewish calendar, May/June] in the morning heading for the Maghrib. After one day of sailing the ship foundered and [many Jewish travelers drowned], *may they rest in Paradise*, and only four or three [Jews] escaped in the small boat which is the maidservant of the large ship [*ve-nimleṭū o 4 o 3 ba-sefina ha-keṭana shehī amatah shel ha-gedola*]."[59]

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[55] Qāḍī 'Iyāḍ, *Madhāhib al-Ḥukkām*, p. 236; Shihāb al-Dīn Abū al-'Abbās Ibn Idrīs al-Qarāfī, *Al-Furūq* (Tūnis, 1302/1885), vol. 4, p. 10. Referring to cases of *general average* both jurists indicated that lifeboats, ropes, and other tackle are not to be included within the principle of *general average*.

[56] Buzurg Ibn Shahriyār, *'Ajā'ib al-Hind*, pp. 53, 70, 74, 83, 126, 137.

[57] Nukhaylī, *Al-Sufun al-Islāmiyya*, pp. 95-101. *'Ushārī* boats were used for different purposes. Sometimes historians and geographers of the classical Islamic period refer to them as lighters that transport cargo to the quays from large ships anchoring outside the harbor. On other occasions, as we see in the descriptions of Ibn Jubayr and Ibn Baṭṭūṭa, the *'ushārīs* were used as auxiliary lifeboats.

[58] Ibn Jubayr, *The Travels of Ibn Jubayr*, translated by R. J. Broadhurst (London, 1952), p. 337.

[59] Assaf, *Meqorot u-Meḥqarim*, p. 134, doc. TS 16.54, ll. 57-58.

While on the Red Sea, the ship that Ibn Baṭṭūṭa sailed in foundered *en route*. He was rescued by the auxiliary lifeboat, *ʿushārī*:

> There was a ship there owned by a person known as ʿAbd Allāh al-Tūnisī going to Quṣayr, and I went on board to see what state it was in, but I was not satisfied. This was an act of providence for the ship sailed and foundered in the open sea in close vicinity to Ra's Abī Muḥammad. The shipowner and very few merchants boarded the *ʿushārī*.[60]

These few accounts call into question the assumption that commercial ships of the classical Islamic period did have lifeboats on board.

Ocean-going carriers in the Indian Ocean routinely carried small boats on board, and these appear to have been of two sorts, the *qārib* and the *dūnīj*. The *qārib* was larger, for on one occasion it carried fifteen men compared with four in the *dūnīj*; and it could take as many as thirty-three men. It was thus apparently used as a lifeboat. The *dūnīj* was used as a shoreboat or lifeboat, and in an emergency might be outfitted with a mast and sail.[61] The tales of the captain Buzurg Ibn Shahriyār, dated 900-953 C.E., most of which are based on real accounts, corroborate the notion that large-sized ships carried lifeboats on board.[62] The famous Arab pilot Aḥmad Ibn Mājid, who refers to the ship's boat as a *sanbūq*, also substantiates this hypothesis.[63]

In short, the classification of vessels into two categories, *i.e.*, seagoing and inland, which remains a controversial matter, needs further study by maritime historians. While the discussion above proves that ships traveled from the inland ports of Egypt to the Mediterranean port cities and vice versa, an insignificant number of vessels sailed on rivers only. Vessels limited to river travel were often found on the Euphrates and the Tigris.[64]

In contrast with European maritime practice, where names for ships do not appear prior to 1200 C.E., Islamic legal sources from the

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[60] Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa* (Cairo, 1938), vol. 2, p. 222. The term *ʿushārī* appears in the edition of 1966, vol. 2, p. 251.

[61] Hourani, *Arab Seafaring in the Indian Ocean*, p. 99; Goitein, *Letters*, p. 63, note 5, the author concedes that ocean-going ships carrying freight and passengers were usually accompanied by smaller vessels serving as lifeboats.

[62] Buzurg Ibn Shahriyār, *ʿAjā'ib al-Hind*, pp. 53, 70, 74, 83, 126, 137.

[63] Ibn Mājid, *Al-Fawā'id*, p. 340.

[64] Nuwayrī, *Al-Ilmām*, vol. 2, pp. 250-251; Kāṭim al-Dujaylī, "Al-Sufun fī al-ʿIrāq," *Lughat al-ʿArab* 2 (1912-1913), pp. 93-106, 198-205, 393-402; Samuel M. Stern, "Three Petitions of the Fāṭimīd Period," *Oriens* 15 (1962), pp. 175-176; Zayyāt, "Muʿjam al-Marākib wal-Sufun fī al-Islām," pp. 321-364.

ninth century C.E. dictate that the vessel proprietor name his craft. Ships commonly bore the names of their owners, captains, or derogatory or laudatory nicknames expressing the travelers' experiences with them. The importance of calling the vessels by names is reflected in legal and official contexts. Legally, the sales and leasing contracts of ships were considered nullified in the absence of the ship's name. And, from the official point of view, the port superintendent had to register every commercial vessel, local and foreign, entering the harbor for security reasons and financial arrangements.

For safety measures it was the obligation of the shipowner and captain to inspect the vessel both before it set sail and during the journey. Law and custom ruled that the ship be loaded in accordance with its actual capacity. If the shipowner intentionally overloaded his vessel, he was required to remunerate the cargo owners in case of damage and jettison.

The few references to lifeboats aboard commercial carriers prove that such practice existed during the classical Islamic period. However, the shipowner, as the jurisprudential sources demonstrate, was not obliged to equip his vessel with such a craft.

CHAPTER TWO

OWNERS, CREW, AND PASSENGERS

The Shipowner

As a result of the high costs incurred in the shipping business, only a small group of governmental officials, wealthy merchants, and private entrepreneurs had the necessary capital for investment in this sector. Shipowners seemed to have been drawn from a fairly wide spectrum of the upper and middle classes.[1] Four factors may have prevented ordinary investors from entering the shipping industry: (a) the short supply of raw materials, especially wood, (b) the high costs of ship maintenance, (c) the need to provision commercial vessels with combatants to protect them against enemy or pirate raids, and (d) the cost of salaries of crew members.

A ship normally had a single proprietor who personally dealt with his clients. Nonetheless, when the ship was owned by a governor, communal leader, commander, *wazīr*, *qāḍī*, or courtier, his agent [*wakīl al-markab*] or the overseer of the vessel(s)[2] was authorized to sign leasing contracts with the lessees. In both cases, the shipowner or his agent was bound by the nature of the maritime contract to guarantee the safe delivery of cargo to the destined port and was responsible for the professional behavior of sailors and the protection of passengers.[3]

The *fatāwā* lengthily discuss the responsibility of the shipowner for the safe delivery of goods and for any damage done to them. The

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[1] Nāṣir-ī Khosraw, *Book of Travels (Safarnāma)* (New York: State University of New York Press, 1986), pp. 39, describing the shipping business in the Egyptian seaport city of Tennis, writes: "The population of this city is fifty thousand, and there are at any given time at least a thousand ships at anchor belonging both to private merchants and to the *sulṭān*." Goitein, *A Mediterranean Society*, vol 1, pp. 309-310; Udovitch, "Time, the Sea and Society," pp. 519-520; *idem*, "Merchants and Amīrs," *Asian and African Studies* 22 (1988), pp. 58, 61-62.

[2] Goitein, "The Tribulation of an Overseer of the Sultan's Ships," in *Arabic and Islamic Studies in the Honor of Hamilton A. R. Gibb*, (ed.) George Makdisi (Harvard: Harvard University Press, 1965), pp. 271-275, doc. TS 24.78, margin; TS 12.224, l. 15; TS 8 J 21, f. 29, ll. 4-6.

[3] Ṭāher (ed.) *Kitāb Akriyat al-Sufun*, p. 14.

shipowner was not liable for the losses if the damage was caused by natural factors. Intentional negligence on his part or that of the crew members obliged him to remunerate the merchant. If the shipowner could prove that the damage was unavoidable, he was absolved of responsibility.[4] He could also relieve himself from responsibility if the merchant or his agent accompanied the shipment or was sailing on another ship.[5] The shipowner was bound to carry the shipment safely and deliver it at the journey's end in the same state in which he received it. Additionally, he was obligated not to sell or steal any part of, let alone the entire, shipment. If he did so, the merchant was either entitled to receive the same kind, quality, and quantity of the shipment, or an equivalent amount of his shipment based on the market price at the destination [*bil-balad al-aqṣā al-ladhī ʿalayhi an yablughahu ilayhi*].[6]

Suretyship was also applicable to substantial foodstuffs, which the *fuqahā'* classified in five categories: crops, leguminosae, shortening, dehydrated goods, and salt. The shipowners were liable for the safe delivery of certain crops, namely, barley, wheat, rye, spelt, corn, and millet. The leguminosae included fava beans, lentils, chickpeas, black-eyed peas, and chickling vetch. Shortening consisted of cooking butter (fat), honey, oil, and vinegar. Dry goods were defined as dates, raisins, and olives; spices, fish, meat, fruit, and vegetables were not included. In case of loss or damage, the shipowner had to provide decisive evidence proving the credibility of his testimony.[7]

In spite of the implicit liability for the safekeeping of cargo, neither the shipowner nor the lessee (merchant) could guarantee or demand

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[4] *Ibid.*, pp. 38-39; Muḥammad Ibn Aḥmad al-Sarakhsī, *Kitāb al-Mabsūṭ* (Cairo: Maṭbaʿat al-Saʿāda, 1324/1906), vol. 16, p. 10; *Al-Fatāwā al-Hindiyya*, vol. 2, p. 335; vol. 4, p. 503; Ṭūsī, *Tahdhīb*, vol. 7, pp. 216-217; Ibn Nujaym al-Miṣrī, *Al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā'iq* (Cairo, 1894), vol. 8, pp. 31-33; Abū Jaʿfar Muḥammad Ibn Manṣūr Ibn Aḥmad Ibn Idrīs al-Ḥillī, *Kitāb al-Sarā'ir* (Qumm: Mu'assasat al-Nashr al-Islāmī, 1989), vol. 2, p. 470; Muḥaqqiq al-Thānī, *Jāmiʿ al-Maqāṣid fī Sharḥ al-Qawāʿid* (Beirut: Mu'assasat Āl al-Bayt, 1991), vol. 7, p. 298; Saḥnūn Ibn Saʿīd al-Tanūkhī, *Al-Mudawwana al-Kubrā* (Cairo: Maṭbaʿat al-Saʿāda, 1323/1905), vol. 4, pp. 494-495; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, p. 58.

[5] Sarakhsī, *Al-Mabsūṭ*, vol. 16, p. 10; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 322, Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 42; Saḥnūn, *Al-Mudawwana*, vol. 4, p. 494; Rafīʿ, *Muʿīn al-Ḥukkām*, vol. 2, p. 527.

[6] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 38-39; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 135-137.

[7] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 38-40.

the safe delivery of cargo to its destination. The leasing contract was considered nullified if it contained such a clause.[8] This prohibition resulted from the belief that the shipowner could not assume this risk as his responsibility. It goes without saying that the shipowner, even without seeking the merchants' confirmation, was allowed to jettison a part or the whole shipment if danger of sinking presented itself.[9]

Both parties, the lessee and lessor, were required to fulfill the financial obligation indicated in the ship-leasing contract. Here we refer to the legal situation if either party declared insolvency. The proprietor of the ship could be forced to sell his vessel if he could not pay the sailors' salaries, or if the consignment was lost or damaged due to his negligence, or if he could not continue the maritime venture owing to financial difficulties. Such a case, mentioned in a Geniza court record, was summoned before the *qāḍī* of Alexandria who forced the agent of the Tunisian ship proprietor [*wakīl al-maqrūḍ*] to sell the vessel for three-hundred *dīnār*s.[10] Similarly, Ibn Rushd rules that a merchant who is unable to fulfill his financial obligation must pledge his goods to the shipowner: "Insolvency signifies that the shipowner has prior right to the shipment until he collects the fees owed to him. If the shipment is still at sea, it is agreed that the shipowner would deserve it more than the lessee's inheritors or creditors alike."[11]

Joint Owners of Ship

When a ship was owned by more than one person, the vessel was divided into theoretical shares with each partner owning one or more of these parts. The co-owner could own a half, a quarter, etc. of the

[8] *Ibid.*, p. 41.

[9] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 237; Kindī, *Al-Muṣannaf*, vol. 18, p. 60; Abū al-Qāsim Muḥammad Ibn Aḥmad Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya* (Tūnis: Al-Dār al-ʿArabiyya lil-Kitāb, 1982), p. 337; ʿAbd Allāh Ibn ʿUmar al-Bayḍāwī, *Al-Ghāya al-Quṣwā fī Dirāyat al-Fatwā* (Al-Dummām: Dār al-Iṣlāḥ lil-Ṭabaʿ wal-Nashr, 1982), vol. 1, p. 901.

[10] Ben-Sasson, *Yehudei Sitzilya*, pp. 226-229; Goitein, "Mishar ha-Yehudim," pp. 387-389, doc. TS 13 J 17, f. 11, ll. 5-7: "And I asked for news from the agent of the ship *al-maqrūḍ*, and I learned that he received 300 *dīnār*s from Ibn ʿImrān for 12 bales of flax, plus commission. He sold the ship out from under him on the testimony of some Gentiles who bore witness against him [*wa-saʾltu ʿan akhbār wakīl al-maqrūḍ wa-ʿaraftu annahu qabaḍa min Ibn ʿImrān ḥaqq 12 ʿidl kittān bi-wasāṭat 300 dīnār wa-bāʿ al-markab ʿalayhi* ...]."

[11] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 10, pp. 547-548.

entire ship.[12] This form of partnership is based upon the concept of trusteeship and reciprocal relationship among the shareholders. Legally, where there are several independent part owners, they hold the ship as tenants in common, not as partners, though her owners are treated on the footing of a partnership. One part owner, thus, cannot generally bind the other owners by engaging to let the use of the ship to a particular person, or employ it in a particular way. He is not, from the mere fact of co-ownership, their agent to do ship's business. To make his contract binding on them, he must have had actual authority to contract on their behalf. When a contract for the employment of the ship has been made by one part owner with authority of his co-owners, they each become personally bound by it; and each is liable in full for a breach of it; having a right of contribution from the others. Each of the part owners, then, for whom, and with whose authority, a contract for the ship's employment has been made, is liable in full for any breach of it.

Vehement altercations could take place among the co-owners and could ruin the partnership. Expenses for repairing damage to a ship had to be distributed equally in accordance with the share of each shareholder. To cope with this issue, Muslim *fuqahā'* outlined three subsidiary precepts: (a) a co-owner who failed to pay his dues would be deprived of a part of his share in the entire ship, (b) a co-owner had the free choice to maintain his share by paying for his portion of the repairs, (c) and finally, damage to the ship was to be assessed before any work was done in case a co-owner decided to sell his share. When a shareholder wished to sell his share, his co-owner(s) would have a preferential right of purchasing it.[13] The ship's value was to be determined by experts in the maritime industry.[14] The Mālikī authorities call the experts in maritime affairs [*ahl al-ma'rifa*].[15]

Nullification of the partnership contract was legally acceptable in case of lack of confidence among the partners. In acting unilaterally,

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[12] *Idem*, *Fatāwā*, vol. 2, p. 836; Qāḍī 'Iyāḍ, *Madhāhib al-Ḥukkām*, p. 235; 'Īsā Ibn 'Alī al-Ḥasanī al-'Alamī, *Kitāb al-Nawāzil* (Rabāṭ: Wizārat al-Awqāf wal-Shu'ūn al-Islāmiyya, 1986), vol. 2, p. 110; Wansharīsī, *Al-Mi'yār*, vol. 8, pp. 305-306, 308, 312; Rafi', *Mu'īn al-Ḥukkām*, vol. 2, p. 528; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 45.

[13] Wansharīsī, *Al-Mi'yār*, vol. 8, p. 312; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 45; Rafi', *Mu'īn al-Ḥukkām*, vol. 2, p. 528; Idris, "Commerce Maritime," p. 239.

[14] Ibn Bassām, *Nihāyat al-Rutba*, pp. 148, 157; Ḥasanayn, *Al-Ḥisba fi al-Islām*, p. 37; Ibn Mājid, *Al-Fawā'id*, p. 239; Kindī, *Al-Muṣannaf*, vol. 21, pp. 153-154; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 21, p. 296.

[15] Idris, "Commerce Maritime," p. 236.

a co-owner violated the basic principles of the partnership. For instance, he could not carry out leasing transactions without the authorization of his partners. In order to avoid nullification due to lack of confidence, the law required the co-owners to cooperate with each other.[16]

Besides being a part owner, a partner was entitled to act as a merchant agent [*ʿāmil al-qirāḍ*] in so far as he got paid both for transporting cargo and for receiving his share from commercial transactions.[17] However, the law states that if a partner did not participate in a commercial transaction, he would receive the fee for transportation only. The absence of any partner in negotiation excluded him from collecting a portion of profit even if local custom allowed this.[18]

Of particular interest are cases in which one of the co-owners is involved in transporting his own cargo while the other co-owner had nothing to load. The law decrees that the latter could neither prevent his partner from transporting, nor oblige him to pay the transportation fee. And if a dispute arose that they could not settle, they would have to dissolve the partnership and sell the ship.[19] Otherwise the shareholder, in all cases, must reimburse his co-owners if he uses their allocated space on board. The amount of reimbursement would be fixed according to the current rates of leasing at the port of origin.[20] In general it appears that the rights of the owners were guaranteed subject to their acting in good faith.

Jurisprudential sources provide us with information not found in the sporadic mentions of partnerships in ships in the Geniza records. Legal documents deal with complaints and cases that were presented before the *Nagīd* for final settlement. Such a matter occurred around the 1110s C.E., when the *Nagīd* Mevorakh b. Saʿādya (born ca. 1040 and died December 2, 1111 C.E.) was expected to make a decision in a partnership involving a riverboat.[21] On the other hand, letters of

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[16] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 305-306.

[17] Idris, "Commerce Maritime," pp. 235-236.

[18] Qāḍī ʿIyāḍ, *Madhāhib al-Hukkām*, p. 235; TS 13 J 17, f. 11, l. 5.

[19] Wansharīsī, *Al-Miʿyār*, vol. 8, p. 308; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p.45; Ibn Rushd, *Fatāwā*, vol. 2, p. 836; ʿAlamī, *Al-Nawāzil*, vol. 2, p. 110.

[20] Wansharīsī, *Al-Miʿyār*, vol. 9, p. 117; Idris, "Commerce Maritime," p. 236.

[21] TS 18 J 4, f. 6, ll. 6-36. On the date death of Mevorakh b. Saʿādya see Mark R. Cohen, *Jewish Self-Government in Medieval Egypt* (Princeton: Princeton University Press, 1980), pp. 147-148.

commerce usually contain the names of the shareholders, their professional behavior toward the lessees, and the description and volume of the shipment on board the vessel.[22]

The Crew Members and Their Duties

In addition to the shipowner, a full complement of officers and crew on board a large-sized or a seagoing vessel could reach as high as twelve personnel. The complement was formed of:

1. *Representative of the Shipowner*—In modern terms he is called the "ship's husband." Described by al-Muqaddasī and the Geniza as *wakīl al-markab*[23] or *al-mushrif ʿalā al-markab* (the overseer of the vessel), he was officially in charge of the passengers and the goods carried by them. His superior was not the captain of the ship in which he traveled, but the person who owned the ship. In the absence of the shipowner, he could act as his representative and deal directly with the clients.[24] In addition, he was authorized to sign a leasing contract with the lessee(s). From the legal point of view, he represented the shipowner before the court when the passengers sued the shipowner. Just such a case, as we have seen above, took place in Alexandria, where the agent of the proprietor was forced to sell the ship owing to some claim brought by the lessee.[25]

2. *Captain or Shipmaster (Rubbān* or *Muʿallim)*—In first encountering medieval accounts of maritime activity, we discover some conflation of the terms *nākhūdhā*, *muʿallim*, and *rubbān*. It seems the two terms *al-muʿallim* and *al-rubbān*, as defined by Tibbetts, are equivalent. Nevertheless, the *rubbān* was specifically a coastal or localized pilot, while the *muʿallim* seems to have been a career captain possessing nautical

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[22] Ben-Sasson, *Yehudei Sitzilya*, pp. 453-459, doc. TS 20.4, l. 4; pp. 203-210, doc. TS 13 J 29, f. 9, l. 6; TS 10 J 11, f. 23, ll. 2-4: "Its proprietors are Ṭāher and his partner [*bi-ṣāḥibihi Ṭāher wa-sharīkihi*]"; TS 20.69, l. 29: "*fī qārib Ibn Abī al-Wakīl al-ladhī nisfahu lil-shaykh Abī al-Faraj.*"

[23] Idris, "Commerce Maritime," p. 237.

[24] Abū ʿAbd Allāh Muḥammad Ibn Aḥmad al-Bashshārī al-Muqaddasī, *Aḥsan al-Taqāsīm fī Maʿrifat al-Aqālīm* (Leiden: Brill, 1909), p. 10; Goitein, "The Tribulation of an Overseer of the Sultan's Ships," pp. 271-275, doc. TS 24.78; *idem*, *Letters*, p. 81; TS 12. 224, l. 15; TS 8 J 21, f. 29, ll. 4-6; *idem*, *A Mediterranean Society*, vol. 1, pp. 337-339; Ben-Sasson, *Yehudei Sitzilya*, pp. 194-199; Mohamed Fahmy, *Muslim Naval Organization in the Eastern Mediterranean from the Seventh to the Tenth Century A.D.* (Cairo: National Publication & Printing House, 1966), p. 139.

[25] TS 13 J 17, f. 11, ll. 5-8. See above Chapter Two, p. 39, note 10.

skill and most likely contracted by a *nākhūdhā* who owned the ship.[26] This limited image of the medieval captain is elaborated in the description provided in Ibn Mājid's book, *Kītāb al-Fawā'id fī Uṣūl 'Ilm al-Baḥr wal-Qawā'id.* According to Ibn Mājid, the captain's personality should be characterized as forbearing rather than negligent; he must be well acquainted with all matters on board, soft-spoken, unprejudiced, upstanding, faithful, trustworthy, respectful, intelligent, and friendly with all merchants and passengers.[27] His relationship with the passengers must be characterized by mutual cooperation.[28] The necessity of assessing the passengers' character before boarding was regarded as an important duty of the captain, one that could prevent serious consequences. Under all circumstances he was required to disregard any advice from suspect passengers.[29] He also was required to supervise the passengers' movements, to forbid chatter among them, and to avoid being overly familiar with them because such acts could jeopardize his authority.

Apart from being a skillful navigator, the captain had to be well versed in astronomy, atmospheric conditions, typhoons, seaweed, birds, wind directions, high and low tides, geographical locations, straits, ports, and coral reefs.[30] Before the ship set sail, a minute

[26] Tibbetts, *Arab Navigation in the Indian Ocean*, pp. 60-61. The Geniza papers describe him as "the chief of the vessel [*rayyis al-markab*]," TS 12.434.

[27] Ibn Mājid, *Al-Fawā'id*, pp. 29-30; 'Īsā al-Quṭāmī, *Dalīl al-Muḥtār fī 'Ilm al-Biḥār* (Cairo, 1950), pp. 9-10.

[28] Goitein, "Portrait of a Medieval India Trader: Three Letters from the Cairo Geniza," *Bulletin of the School of Oriental and African Studies* 50 (1987), p. 460, doc. TS AS 156.238, l. 5-v, l. 1. In this document we read about two captains who signed documents specifying their obligations towards the passengers: "Two captains travelled with us, after they had signed documents [confirming their obligations] towards us, and we set sail."

[29] Ibn Mājid, *Al-Fawā'id*, p. 245: "Look thoroughly at all the passengers and the crew and assess them carefully, then you will recognize any evil in them and be prepared for it."

[30] An identical description appears in Malay sea law: "It is the duty of the *mu'allim* to remember the proper course to steer, and to know the sea and lands, the wind and the waves; the currents, the depths, the shallows; the moon and the stars, the years and the seasons; and the bays, and the points of land; the islands and coasts; the rocks and shores, the mountains and hills; each and every of them; and also to know where the *prahu* [vessel] may be at any time; with the whole of these the *mu'allim* should be well acquainted, in order that every thing may go on prosperously, as well at sea as on land; and that the *mu'allim* may be free from fault." Sir Stanford Raffles, "The Maritime Code of the Malays," *Royal Asiatic Society of Great Britain and Ireland; Malayan Branch* (1879), p. 67; Sulaymān Ibn Muḥammad al-Mahrī, *Al-'Umda al-Mahriyya fī Ḍabṭ al-'Ulūm al-Baḥriyya* (Damascus: Maṭba'at al-Sa'āda, 1970) p. 27; Nuwayrī, *Al-Ilmām*, vol. 2, pp. 236-243.

technical inspection of its hull had to be completed in order to insure that its planks, keel, frames, and wales were watertight.[31] Frequent inspections by the *muʿallim* would also have to be undertaken during the journey; if defects were discovered, they obviously had to be treated immediately.[32] Most importantly, in order to avoid enormous losses and to secure a safe journey, the captain was under obligation not to overload the ship.[33] With regard to departure schedules, he could not weigh anchor if the sailing season was almost over.[34] Last, but not least, the captain was required to organize and recruit trustworthy crew members. He was responsible for selecting men who would be willing to respect his command.[35] As a rule, the captain and

[31] Ibn Mājid, *Al-Fawāʾid*, pp. 28, 239. On p. 239, he writes: "Inspect the whole hull of the ship while it is on land/dockyard and write down all its imperfections [*taʾammal al-safīna wa-hiya fawqa al-arḍ wʾaktub jamīʿ khalaluhā*]." Kindī, *Al-Muṣannaf*, vol. 21, pp. 153-154.

[32] Ibn Mājid, *Al-Fawāʾid*, p. 242: "Consider all the equipment of the ship, especially the rudder, at every possible opportunity ... Do not notice a disorder in the ship and ignore it until a later date except when absolutely necessary for it will only get out of hand"; Mahrī, *Al-Minhāj al-Fākhir fī ʿIlm al-Baḥar al-Ẓākhir* (Damascus: Maṭbaʿat al-Saʿāda, 1970), p. 109; *idem*, *Al-ʿUmda al-Mahriyya*, p. 193; Raffles, "The Maritime Code of the Malays," p. 67: "While a *prahu* is at sea, the *muʿallim* again shall have charge of all the cordage, and rigging." And Sidi Çelebi, "Extracts from the Mohit, that is the Ocean, A Turkish Work on Navigation in the Indian Sea," translated by J. Hammer-Purgstall, *Journal of the Asiatic Society of Bengal* 6 (1837), p. 807: "Be on your guard against being neglectful during the course in the sea ... Take care to muster on each voyage all your instruments and stores, be it masts, rudders, yards: if the wind be strong shorten your sails, particularly at night, if the sky be clouded, windy, rainy; be on your guard against incurring damage."

[33] Ibn Mājid, *Al-Fawāʾid*, pp. 239-248. He emphasizes this prohibition in two different places. On p. 29, he writes: "He should not load it more than is the custom [*wa-lā yashḥanuhā illā al-ʿāda*]." On p. 242: "Never overload the ship [*wa-ikhtaṣir al-shaḥna*]." Regarding the packing and protection of cargo against natural factors Ibn Mājid advises the captain to do so before the sailing season is closed. On p. 319 he writes: "Unless you protect your ship as you do when making landfalls in the sea off Bengal, expecting that the rains will soon cease, your possessions loaded on board will be ruined"; Mahrī, *Al-Minhāj al-Fākhir*, p. 105.

[34] Ibn Mājid, *Al-Fawāʾid*, pp. 28-29: "[Choose the right season] and do not sail whenever the sailing season is near the end [*wa-lā yusāfir fī ḍīqi al-mawsim*]"; Mahrī, *Al-Minhāj al-Fākhir*, p. 105; *idem*, *Al-ʿUmda al-Mahriyya*, p. 192.

[35] Ibn Mājid, *Al-Fawāʾid*, p. 241. An emphasis was put upon choosing reliable crew members in order to avoid problems during the voyage. The personal background of each sailor must be known to the captain: "Do not fraternize with the man who disobeys you over any affair of yours. In distress you will not find any companion except secrets kept [*wa-lā taṣḥab man lā yuṭīʿaka fī mā yaʿnīka, fa-lā tajid laka fī al-shadāʾid wal-maṣāʾib sharīkan*]."

the crew members were the last group to abandon the ship if it was wrecked.[36]

From the legal point of view, we may assume that the shipmaster cannot engage it for purposes or on terms essentially different from those on which the owners employed it. For instance, a shipmaster has not authority to carry goods freight free; nor to contract to carry at a lower freight than that agreed upon by the owner with the freighter; nor to agree that the freight shall be payable to any person other than the owners of the ship. And when the ship has been chartered by the owners the master has not authority to cancel the charter-party, to alter its terms. He is the owners' agent for the voyage defined by the charter-party, and has not power to change it for another. Thus, he cannot validly agree to change her destination, nor alter the amount of freight to be paid, or manner of paying it.

3. *Chief Navigator*—As the second-ranked officer, after the captain, the chief navigator was in charge of the sailors. His job was to oversee the performance of the sailors aboard the vessel and to inspect the tackle, masts, sailingyards, anchors, and other equipment. If a theft, a fight, or any other problem occurred during the maritime venture, he had to inform the captain.[37] We might refer to him as the captain's assistant, and indeed, it is reasonable to suppose that when the Geniza documents refer to an "auxiliary" captain aboard a vessel, they were applying the term to the chief navigator since he functioned as a vice captain. Where the appointed master has died, the first mate, *i.e.*, the chief navigator, succeeds to his office, and takes over his duties.[38]

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[36] Buzurg Ibn Shahriyār, *The Book of the Wonders of India*, ed. and translated by G. S. Freeman-Greville, (London, 1981), p. 16: "All of us captains are bound by oaths. We are sworn not to expose a ship to loss when it is still sound and its hour not yet come. All us captains, when we board a ship, stake our lives and destiny on it. If the ship is saved, we remain alive. If it is lost, we die with it." For this text in Arabic see, Buzurg Ibn Shahriyār, *ʿAjā'ib al-Hind*, pp. 58-59.

[37] Abū al-Faḍl al-ʿĀllāmī, *Ā-inī Akbarī*, translated from the original Persian by H. Blochmann. 3rd. ed. rev. by D. C. Phillott (Delhi, 1989), vol. 1, pp. 289-290; Raffles, "The Maritime Codes of the Malays," p. 64; R. Winstedt & P. E. Josselin de Jong, "The Maritime Laws of Malaca," *Journal of the Malayan Branch of the Royal Asiatic Society—Singapore* 29 no. 3 (1956), p. 51.

[38] Goitein, "Portrait of a Medieval India Trader," pp. 460-461; TS 8 J 18, f. 2, ll. 4-5 (*India Book*, doc. 102); and TS 10 J 15, f. 3, ll. 4-5 (*India Book*, doc. 103).

4. *Scribe*—Known as a *karrānī* in the Indian Ocean, he functioned as the accountant of the ship.[39] His duty was to record the names of sailors and passengers, and the volume and quality of cargo aboard the vessel in the ledger (or cargo book), and he was responsible for the safety of the shipment on board.[40] Occasionally, he assigned a specific person called a *bhandarī* to be in charge of the stores. Thus, neither the sailors nor the passengers were allowed to remove any personal or commercial article from the hold without the permission and presence of the scribe. The scribe also enjoyed other responsibilities. Together with the shipowner and the captain, the scribe had to witness any agreement concluded aboard the vessel.[41] A Hebrew letter describes a Jew who held this position as "the treasurer and the great (commander of the ship) [*ha-gizbar ve-ha-gadol*]."[42]

5. *Armed Personnel*—Customarily, Muslim merchant vessels were escorted by warriors to protect them from maritime raids by enemy and pirate ships. In the sailors' jargon, these warriors were known as "the maritime warriors" or "the ships' warriors [*al-ʿasākir al-baḥriyya* or *ʿasākir al-marākib*]."[43] From the tenth century C.E., this practice became very common.[44] Refering to the guards aboard Arab merchant vessels sailing off Omānī coasts, al-Muqaddasī reports: "All ships sailing over this part of the sea are constrained to carry for protection a body of fighting men and throwers of naphtha."[45] In the absence of armed personnel the sailors were required to defend the ship against assaults of enemies and pirates.[46]

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[39] Jamāl al-Dīn Abū al-Fatḥ Yūsuf Ibn Yaʿqūb Ibn Muḥammad Ibn al-Mujāwir, *Ṣifat Bilād al-Yaman wa-Makka wa-Baʿḍ al-Ḥijāz al-Musammā Taʾrīkh al-Mustabṣir* (Leiden: Brill, 1951), pp. 138-139.

[40] Ṭāher (ed.) *Kitāb Akriyat al-Sufun*, p. 37.

[41] Abū al-Faḍl al-ʿĀllāmī, *ʿĀ-inī Akbarī*, pp. 289-290.

[42] Assaf, *Meqorot u-Meḥqarim*, p. 133, doc. TS 16.54, l. 31.

[43] L. O. Schuman, *Political History of the Yemen at the Beginning of the 16th Century* (Amsterdam, 1961), p. 71.

[44] Abū al-ʿAbbās Aḥmad al-Qalqashandī, *Ṣubḥ al-Aʿshā fī Ṣināʿat al-Inshā* (Cairo: Al-Maṭbaʿa al-Amīriyya, 1913), vol. 3, p. 524; ʿAbbādy and Sālim, *Tārīkh al-Baḥriyya al-Islāmiyya fī Miūr wal-Shām*, pp. 157-158; Sālim, *Al-Baḥr al-Aḥmar fī al-Tārīkh al-Islāmī* (Alexandria, 1993), pp. 27-29; Udovitch, "Time, the Sea and Society," pp. 539-540; Goitein, *Letters*, pp. 311-315; *idem*, "Misḥar ha-Yehudim," pp. 372-375.

[45] Muqaddasī, *Aḥsan al-Taqāsīm*, p. 12; Ibn Baṭṭūṭa, *Travels in Asia and Africa*, translated and selected by H. A. R. Gibb (London: Broadway House, Carter Lane, 1929), pp. 229-230.

[46] Kindī, *Al-Muṣannaf*, vol. 18, pp. 55-56.

6. *Helmsman*—Known in Arabic as a *ṣāḥib al-sukkān*, he steered the ship according to the orders of the captain. Usually, a ship carried several helmsmen.[47]

7. *Sailors of the Prow*—These sailors were under the command of the helmsman of the stern. They supervised the docking and landing of the ship. Oarsmen fall within this category.

8. *Watchmen*— The watchmen were stationed at the top of the mast(s) and gave notice when they sighted land, an enemy ship, or a coming storm.[48]

9. *Ship's Carpenter*—Assisted by a certain number of technicians, the ship's carpenters were required to repair any damage to a vessel during a voyage or at the yard.[49]

10. *Cook*—The cook prepared food for the sailors and supplied the passengers with firewood and straw.[50] As a rule, after cooking, fires were always put out. If the cook, his assistant, or a crew member failed to do so, with the result that the galley or anything on board the ship caught fire, the negligent one would be punished.[51] Again, it should be remembered that the movement of sailors and passengers on board the ship was restricted, and not everyone would have access to the caboose.[52]

12. *Common Sailors or Servants*—These sailors set and furled the sails. Some of them additionally performed the duty of divers, assisting in stopping leaks or freeing the anchor when it stuck fast.

Whether or not such an elaborate and variegated staff was maintained on a typical ship is not known for certain, but it is likely that only larger vessels carrying valuable cargo and engaged on lengthy voyages took their full complement of officers and crew.[53]

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[47] Buzurg Ibn Shahriyār, *'Ajā'ib al-Hind*, p. 94; Ibn Mājid, *Al-Fawā'id*, pp. 202, 242; Mahrī, *Al-Minhāj al-Fākhir*, pp. 107-109.

[48] Winstedt & Josselin, "The Maritime Laws of Malacca," p. 55.

[49] Vassilios Christides, "Naval Warfare in the Eastern Mediterranean (6th-14th Centuries): An Arabic Translation of Leo VI's Naumachica," *Graeco-Arabica* 3 (1984), pp. 142-143; Nukhaylī, *Al-Sufun al-Islāmiyya*, p. 46.

[50] Abū Ja'far Muḥammad Ibn Jarīr al-Ṭabarī, *Tārīkh al-Umam wal-Mulūk* (Leiden: Brill, 1879-1896), vol. 3, p. 1582; Abū al-Faḍl al-'Āllāmī, *'Ā-inī Akbarī*, vol. 1, pp. 289-291; Raffles, "The Maritime Codes of the Malays," pp. 64-65; Winstedt & Josselin, "The Maritime Laws of Malacca," p. 51.

[51] Winstedt & Josselin, "The Maritime Laws of Malacca," p. 58.

[52] *Ibid.*, p. 54.

[53] Chaudhuri, *Trade and Civilization*, p. 125.

Hiring Hands and Condition of Payment

Since the fate and the safety of the ship, merchants, and cargo depended on the reliability of the crew, the captain, who was commissioned to recruit the sailors, was responsible for assessing the character of the sailors before they signed on. Such acquaintance was regarded as imperative since troubles could otherwise develop among the sailors on the one hand, and between the sailors and the passengers on the other. The captain's main concern was to hire men who were willing to follow his instructions.[54] Once recruiting of the sailors was accomplished, the legal procedure of signing the hiring contract ensued. The hiring contract contained two basic elements: the sailors' duties and their rights. The duties of the sailors involved three major factors: specifying the destination, professional behavior of the sailors, and safe delivery of cargo.[55]

The stipulation of safe delivery was to insure the safekeeping of cargo until it was unloaded at the destination. It did not, however, necessarily signify the exclusive liability of sailors for the loss of cargo, which could be due either to harmful conduct or negligence. Harmful conduct was defined as navigational misconduct, *i.e.*, deliberate damage by sailors which either occurred prior to or in the course of the voyage, or at the port of disembarkation. In this case the sailors would be charged with intentional negligence and compelled to indemnify the cargo owners.[56] Conversely, the sailors were not to be held responsible if the damage was unavoidable, particularly if it was due to bad weather conditions and unexpected technical problems.

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[54] Ibn Mājid, *Al-Fawā'id*, p. 241.

[55] Abū Bakr Muḥammad Ibn Muḥammad Ibn ʿĀṣim, *Tuḥfat Ibn ʿĀṣim* (Alger, 1882), pp. 582-583; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 14; Udovitch, "An Eleventh-Century Islamic Treatise," pp. 41-42.

[56] Shammākhī, *Al-Īḍāḥ*, vol. 3, pp. 602-609; Ḥasan Ibn Manṣūr al-Awzajandī, *Fatāwā Kāṭī-Khān* (Cairo, 1865), vol. 2, p. 312; Shāfiʿī, *Al-Umm*, vol. 7, p. 140; Muḥammad Ibn Ibrāhīm Ibn al-Mundhir al-Naysabūrī, *Al-Ishrāf ʿalā Madhāhib Ahl al-ʿIlm* (Qaṭar: Dār al-Thaqāfa, 1986), vol. 1, pp. 236-237; *Al-Fatāwā al-Hindiyya*, vol. 2, p. 335, vol. 4, p. 503; Manlā Maskīn, *Kanz al-Daqā'iq*, vol. 2, p. 157; Muḥammad Ibn ʿAbd al-Wāḥid al-Sīwāsī Ibn al-Humām, *Sharḥ Fatḥ al-Qadīr* (Cairo, 1970), vol. 9, pp. 122-127; Shihāb al-Dīn ʿAbd al-Raḥmān Ibn Muḥammad Ibn ʿAskar, *Ashal al-Madārik: Sharḥ Irshād al-Sālik fī Fiqh Imām al-A'imma Mālik* (Cairo, 1970), vol. 2, p. 333; Abū al-Ḥussayn Aḥmad Ibn Muḥammad al-Qudūrī, *Mukhtaṣar al-Qudūrī* (Karachi, 1379/1960), p. 116; Sarakhsī, *Al-Mabsūṭ*, vol. 16, p. 10; Saḥnūn, *Al-Mudawwana*, vol. 4, pp. 494-495; Nawawī, *Al-Majmūʿ*, vol. 14, pp. 119-125; Ṭūsī, *Tahdhīb*, vol. 7, pp. 216-217; Ibn Nujaym, *Al-Baḥar*, vol. 8, pp. 31-33; Ḥillī, *Al-Sarā'ir*, vol. 2, p. 470; Muḥaqqiq al-Thānī, *Jāmiʿ*, vol. 7, p. 298.

As far as weather conditions were concerned, the sailors would be entirely freed from indemnifying the merchants for losses, as long as they had not sailed at inappropriate times or when the sailing season was over. In short, the sailors were not responsible for the risk of the ship nor its cargo.[57]

The exemption from compensating the merchants was also applicable to cases of technical problems that emerged after the ship was loaded. Most of the *fatāwā* discuss at length damages that were discovered in the bottom of the hull due to the frequent strikes and impact of waves. The sailors, in such situations, were not liable for loss if the ship sank while they were repairing the damage.[58] Likewise, maritime disasters could also take place at the port of embarkation. After the ship's technical inspection was concluded, the porters were permitted to load the cargo. If local custom approved leaving the ship loaded overnight prior to the day of sailing, the sailors would be freed from responsibility even if damage resulted from a technical factor in the interim.[59]

In addition to establishing wages and defining the duration of the hire,[60] the sailors' contract, as documented in Islamic legal codes in the Indian archipelago from the early thirteenth century, requires the captain and his crew members to wait for five or seven days if a sailor falls ill:

> If one of the crew is sick, it is proper to wait for him five or seven days, and if he is not then recovered, and the rest of the crew shall say: "Why are we to bale out the vessel without his assistance," they shall be authorized to enquire for a man for hire, but it must not be one of the crew that is so hired for wages, because no person can perform the duty of two ... .[61]

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[57] Saḥnūn, *Al-Mudawwana*, vol. 4, pp. 494-495; Ṭūsī, *Al-Nihāya fī Mujarrad al-Fiqh wal-Fatāwā* (Beirut: Dār al-Kitāb al-ʿArabī, 1970), pp. 447-449; *Al-Fatāwā al-Hindiyya*, vol. 4, p. 503; Ḥillī, *Al-Sarāʾir*, vol. 2, p. 470; Ibn Nujaym, *Al-Baḥar*, vol. 8, pp. 31-33; Nawawī, *Al-Majmūʿ*, vol. 14, pp. 119-125; Ṣanʿānī, *Al-Muṣannaf*, vol. 8, p. 218.

[58] Shāfiʿī, *Al-Umm*, vol. 6, p. 86; Saḥnūn, *Al-Mudawwana*, vol. 4, pp. 494-495; Sarakhsī, *Al-Mabsūṭ*, vol. 16, p. 10; Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 332-335; Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 190; Ibn Qudāma, *Al-Mughnī*, vol. 7, p. 432; vol. 12, p. 551; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, pp. 447-448; *ibid.*, vol. 16, pp. 76-77; Kindī, *Al-Muṣannaf*, vol. 18, p. 62.

[59] *Al-Fatāwā al-Hindiyya*, vol. 4, p. 503; Ṭūsī, *Tahdhīb*, vol. 7, pp. 216-217.

[60] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 13; Saḥnūn, *Al-Mudawwana*, vol. 4, p. 409; Qudūrī, *Mukhtaṣar*, p. 116.

[61] Raffles, "The Maritime Code of the Malays," pp. 75-76; Winstedt & Josselin, "The Maritime Laws of Malacca," p. 57.

In principle, Islamic law prohibited sailors from breaching the hiring contract before its expiration. The repudiation of the hiring contract was permissible under three circumstances: (a) improper condition of vessel,[62] (b) unfavorable weather conditions, and (c) ambiguity of contract terms.[63]

Besides defining the period, the hiring [*ijāra*] contract was not valid unless the employer fixed the payment for labor: "Whoever hires anyone, let him pay his employee with a known fee ... [*man ista'jara ajīran fa-li-yu'ājirahu bi-ajrin ma'lūm* ...]."[64] If the two parties, the employer (shipowner) and the employee (sailor), agreed upon a definite fee, the former had to pay the latter before the departure. It was otherwise illegal to withhold the fee even if the employer stipulated such a condition in the hiring contract.[65] Despite the adoption of maritime codes that were practiced by the Roman and Byzantine empires, Islamic tradition superseded some laws, particularly those which dealt with financial arrangements. This is a case in point, for the employer had to pay the sailor in advance even if local custom permitted withholding it to the end of the voyage.[66]

The sailor was entitled either to receive a cash payment, part of the shipment,[67] or a percentage of transport charges. Unlike the first two types of remuneration, which were stipulated to be paid in advance and were approved unanimously by the *fuqahā'*,[68] the third type of payment remained a controversial matter. The advocates of the third type postulated that its approval was only justified by two legal parallels. The first group of *fuqahā'* sought wholesale application of a land-sea analogy.[69] These *fuqahā'* believed that the rules applied to riding animals [*dawāb*] were also applicable to ships inasmuch as if the camel driver was entitled to receive a percentage of the freight,

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[62] Kindī, *Al-Muṣannaf*, vol. 21, pp. 153-154; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 21, p. 296.

[63] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 14; Saḥnūn, *Al-Mudawwana*, vol. 4, p. 409.

[64] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 13; Saḥnūn, *Al-Mudawwana*, vol. 4, p. 409; Qadūrī, *Mukhtaṣar*, p. 116; Ibn 'Āṣim, *Tuḥfat Ibn 'Āṣim*, pp. 582-583.

[65] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 17: "*wa-in sharaṭa takhīrahu lam yajuz.*"

[66] *Ibid.*, p. 18: "It is disapproved of to postpone the payment even if the local custom approves it [*wa-in kāna sunnat al-balad ta'khīr al-kirā', aṭunnahu lā yajūz*]."

[67] Raffles, "The Maritime Code of the Malays," p. 66, writes: "The *nākhūdhā* or the owner of the *prahu* gives to each [crew member] according to established custom, what is termed *tolongan*, which signifies assistance or advances; which advances are of two kinds: consisting either of shares of the cargo, or loan of money."

[68] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 17.

[69] *Ibid.*, pp. 46-47: "*wa-huwa fī al-sufun mithlahu fī al-dawāb ... fa-dhālika jā'iz.*"

then the sailor must also be entitled to the same. This reasoning ignores Mālik's distinction between land and maritime jurisprudence.[70] The prohibition against this type of financial arrangement was informed by the understanding that a risk could not be assumed as a responsibility by either party. Due to the possibility of unexpected technical problems, enemy and pirate attacks, or changes in the weather conditions, neither party could guarantee the safe arrival of the ship at the destination.[71] As a result, the great majority of the *fuqahā'* were inclined to rule that the sailors be paid in advance; otherwise the contract was void.[72] The second group among the *fuqahā'* permitted sailors to share the profit with the shipowner if such a stipulation was an outcome of the hiring contract. Nevertheless, the *fuqahā'* reported that the contract must be limited to a short term, not to exceed two months.[73]

Even when paying the wage [*ajr*] in advance was agreed upon, there were certain circumstances that obligated sailors to refund payments to the shipowners. They could be required to refund their entire pay or part of it. The rules regarding the reimbursement of shipowners were applied in cases when the voyage was never undertaken due to bad weather conditions or enemy and pirate attacks.[74] Sailors were not entitled to receive the entire fee if their ship was exposed to unexpected attacks. This, however, depended on the *time* of the attack, whether it took place at the port of embarkation, during the maritime voyage, at the port of disembarkation, or during the return to the home port. If the vessel was attacked at the port of embarkation, the shipowner was freed from liability to pay, and if the sailors had already been paid, they had to refund payment to the

[70] *Ibid.*, p. 26: "*wa-farraqa Mālik wa-Ibn al-Qāsim bayna ḥukm al-barr wal-baḥr.*"

[71] Ibn Nujaym, *Al-Baḥr*, vol. 5, p. 199; ʿĀlim Ibn al-ʿAlā', *Al-Fatāwā al-Tatarkhāniyya*, vol. 5, p. 670; Saḥnūn, *Al-Mudawwana*, vol. 4, pp. 493-494. On p. 410, he writes: "I disapprove of the principle of turning over the pack animal or the ship [to employee] on the condition of sharing the half of the profit with its owner owing to the risk involved [*qāla Mālik: lā uḥibb an yadfaʿ al-rajul safīnatahu aw dābatuhu ʿalā nisf kasbihā wa-hādhā ghadrun*]." An identical quotation appears in *Kitāb Akriyat al-Sufun*, p. 47.

[72] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 46-47.

[73] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 68-69; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 224; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 47.

[74] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 300-301; Abū al-Ḥasan ʿAlī Ibn al-Ḥussayn Ibn Muḥammad al-Sughdī, *Al-Nutaf fī al-Fatāwā* (Beirut: Mu'assasat al-Risāla, 1984), vol. 2, pp. 558-559.

shipowner.[75] This was one of the circumstances that obligated the sailors to refund the entire fee to the shipowner. Otherwise, it was necessary to consider the terms of the hiring contract. If the ship was interrupted on its voyage, the sailors were to be remunerated according to the distance covered. And if the hiring contract dealt with seasonal *ijāra*, the sailors had to be compensated in proportion to the time passed. These rules also applied in cases of shipwreck.[76]

It is clear that there were two general types of hiring contracts, those that were seasonal and those signed for specific voyages. Under any circumstance, the sailors in a seasonal agreement were entitled to be paid according to the time elapsed. The situation was more complicated when the hiring contract was signed for specific destinations. Often the hiring contract was compromised or not binding due to unfavorable weather which forced the ship to remain at the port of embarkation, change direction, or turn back to the home port. The law states that if the winter approached and none of the parties involved nullified the hiring contract, it would remain valid for the next season, when such a voyage would again be possible.[77] This principle was only applied to a ship that had not yet left the port of embarkation. Al-Dāwūdī (d. 402/1011) considers that nothing is owed to the crew [*ujrā' al-markab*] as long as they have not reached their destination. If they are prevented from it and the trip must be delayed for the next season, nothing is owed to the sailors; and if they have been paid in advance they must give their advane back to the shipowner. Abū 'Imrān al-Fāsī (d. 430/1038) decrees that their trouble merits compensation.[78] If, however, the ship did begin its voyage but had to make an unavoidable detour, payment would only be made for the original destination. Put differently, if the diversion resulted from unfavorable conditions, the sailors, on the one hand, were obliged to wait for an improvement in the weather, while the shipowner, on the other hand, was bound to pay them their entire

[75] Wansharīsī, *Al-Mi'yār*, vol. 8, p. 298: "*lā tudfa' al-ijāra lil-nūtiyya mā lam yuqli' al-markab wa-qad hūjima fi al-mīnā', wa-in kāna qad dufi' lil-nūtiyya fa-yajib irjā' al-naqd li-ṣāḥib al-markab.*"

[76] Sughdī, *Al-Nutaf*, vol. 2, pp. 558-559; Abū Muḥammad 'Alī Ibn Aḥmad Ibn Sa'īd Ibn Ḥazm, *Al-Muḥallā bil-Āthār* (Beirut: Dār al-Kutub al-'Ilmiyya, 1988), vol. 7, p. 26.

[77] Wansharīsī, *Al-Mi'yār*, vol. 8, p. 301.

[78] Idris, "Commerce Maritime," p. 236.

fees. Moreover, wages also had to be paid if the shipowner decided not to continue the maritime expedition.[79]

Unintentional negligence on the part of the sailors did not exempt the shipowner from paying them the entire payment. For example, it was not uncommon for a ship to change its course as a result of misguidance by the pilot [*al-dalīl*]. However, if the pilot involuntarily misguided the ship, he had to be paid his full wages.[80] From Islamic maritime practice in the Indian Ocean, we also learn that each vessel had to have two *muʿallims*, a chief and vice *muʿallim*.[81] The duty of the vice *muʿallim* was principally to manage the sails according to the wind, while the chief *muʿallim* saw to the course of the vessel.[82] If the latter forgot the course he was to steer, and, through his negligence, the vessel was wrecked, "he must suffer death."[83] The death penalty was only applicable to cases in which the ship suffered wreckage and loss of life. However, one may infer that if such unintentional negligence did not lead to detrimental consequences, the *muʿallim* would remain obliged to steer the vessel to the destination and would also be entitled to the entire remuneration.

In addition to the basic fee paid by the shipowner, the merchant had to pay *barṭīl* (literally a bribe, but here a gratuity) to the sailors at the end of the voyage. The merchants, as custom dictated, rewarded the sailors after unloading the cargo.[84] Thus, if the sailors were paid *barṭīl* in advance of sailing, and for some reason the ship did not set sail, they had to refund the payment to the merchants.[85] Paying the

[79] Kindī, *Al-Muṣannaf*, vol. 21, p. 154.

[80] Wansharīsī, *ʿUdat al-Burūq*, p. 554.

[81] Goitein, "Portrait of a Medieval India Trader," pp. 460-461, doc. TS 8 J 18, f. 2, ll. 4-5.

[82] Raffles, "The Maritime Code of the Malays," p. 64.

[83] *Ibid.*, p. 67.

[84] In addition to the gratuity paid to the sailors, merchants had to pay *barṭīl* to porters, port superintendent, and other workers involved in unloading and storing cargo. Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, p. 294; Goitein, *A Mediterranean Society*, vol. 1, p. 542; *idem*, "Olelot me-Archiyono shel Ben ʿAwkal," *Tarbiz* 38 (1968), pp. 32-36, 182-183, doc. Bodl. MS Heb. d 65 (Cat. 2877), f. 17, l. 4; *idem*, *Letters*, p. 286; Ben-Sasson, *Yehudei Sitzilya*, pp. 202-206, doc. TS 13 J 29, f. 9, ll. 4-6; John Wansbrough, "Venice and Florence in the Mamluk Commercial Privileges," *Bulletin of the School of Oriental and African Studies* 27 (1965), pp. 505-506, 520: "And when the galleys arrive at the harbor of Beirut there is a gratuity of 30 *florins* on each galley for the superintendent."

[85] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 300-301: "The merchants customarily must pay gratuity to the sailors after loading their cargo onto the ship and after unloading it. If they fulfilled the task, they would be rewarded, regardless of whether the leasing

gratuity in advance perhaps was designed to secure a good place for the consignments accompanying the traveler and to insure the safe delivery and unloading of cargo at the destination. The rate of *barṭīl* depended on the cost of living, the time, the volume of the shipment, and the duration of the maritime venture.[86] Eventually, the *barṭīl* was collected by the shipowner who distributed it to the crew.[87]

Passengers; Their Rights and Duties

It is stated that "whoever intends to travel on a ship must learn with certainty about the shipowner, but not from people who are in frequent contact with him."[88] It behooved the passenger to assess the shipowner's character and abilities before the chartering contract was endorsed in order to "feel assured."[89] "Feeling assured" apparently meant believing that there would be no misbehavior on the part of the captain or crew members which could lead to unpleasant consequences during the maritime voyage. An objective impression of the personal background of the shipowner had to be obtained from "outside sources," *i.e.*, from people who were not in frequent or daily contact with him. Obviously, inquiring about the reputation of the shipowner from his circle was considered "unreliable."

For reasons of safety, loading and boarding the ship could not take place without the prior approval of the captain,[90] and passengers were permitted to board only after the technical inspections of the

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contract is nullified or not [*barṭīl al-nūtiyya wal-ʿāda annahu ʿalā al-tujjār li-wuṣūl matāʿihim lil-markab wa-khurūjihi, fa-idhā waffū bi-dhālik thabuta lahum wa-sawāʾ fusikha al-kirāʾ aw lam yufsakh*]."

[86] *Ibid.*, pp. 300-301: "Whatever falls within the category of gratuity differs from time to time, sometimes it is lower and somtimes is higher [*wa-mā yadkhul min al-barṭīl fī al-riḥāl wa-huwa yaqill mudatan wa-yakthur ukhrā*]"; Winstedt & Josselin, "The Maritime Laws of Malacca," p. 58; Bodl. MS Heb. a 3 (Cat. 2873), f. 13v, ll. 11-12; Bodl. MS Heb. d 65 (Cat. 2877), f. 17v, l. 1: "We paid 18 *dīnār*s for leasing, and one *dīnār barṭīl* [*akraynā ʿalā al-ḥiml 18, wa-dīnār barṭīl*]"; TS 1080 J 35, l. 35, the traveler presented a skipper with two baskets of sweetmeat.

[87] Idris, "Commerce Maritime," pp. 237-238.

[88] Kindī, *Al-Muṣannaf*, vol. 18, p. 53: "*man arāda rukūb al-safīna wa-lā yaʿrif ṣāḥibahā illā bi-khabar man lā yaʿrifahu* ... "; *ibid.*, vol. 21, pp. 153-154.

[89] *Ibid*, vol. 18, p. 53: "*Iṭmiʾnānat al-qulūb.*" Ibn ʿAbdūn advised the shipowner and captain not to transport suspicious passengers of the following prescribed groups: "mercenaries of berber origins, black slaves, and people of ill-repute." Ibn ʿAbdūn, *Le Traité d'Ibn ʿAbdūn*, p. 64.

[90] Ibn Mājid, *Al-Fawāʾid*, pp. 28, 239.

ship were concluded.[91] Consequently, the captain was responsible for the safety of his passengers from the time of boarding. He had also to insure a safe boarding for the passengers. Therefore, "if a passenger is hurt when boarding a ship through the galley collapsing, the captain must pay his medical expenses."[92] Designating the passengers' places on board was an exclusive prerogative of the captain. The passenger was not entitled to select a place unless the chartering terms allowed him to do so. Some leasing contracts contained conditions in which the passenger was authorized to designate his own place. Once the passenger was on board, he had to remain in his assigned location so as not to annoy his fellow passengers or cause damage to delicate cargo. The movement of the passenger on board was restricted to seeking the captain's advice,[93] use of the baking oven, and access to the water tank. Nevertheless, if such acts would annoy the passengers or cause damage to cargo, the passenger had to remain seated.[94]

As part of daily life, Muslims must perform certain religious rituals. Although, the overland and sea passenger was not exempt from performing prayers, the traveler was allowed to shorten them.[95] Besides a supply of water for drinking, the ship had to be equipped with buckets for passengers to use for ritual ablution and laundering.[96] Use of the buckets was the only activity that did not require previous

[91] Kindī, *Al-Muṣannaf*, vol. 18, p. 53: "Once the ship was set for sail the passenger is not allowed to board unless he seeks the permission of the shipowner [*fa-idhā qāḍā fī al-markab wa-aḍa'ūhu fī al-mā' fa-lā yarkab ḥattā yushāwir man qāḍā*]."

[92] Winstedt & Josselin, "The Maritime Laws of Malacca," p. 55.

[93] Assaf, *Meqorot u-Meḥqarim*, p. 136; Goitein, "Portrait of a Medieval India Trader," p. 460. In a crisis the captain had also to take counsel with the passengers. Many Geniza letters prove that the captain frequently followed the advice of passengers particularly those who often travelled by sea.

[94] Kindī, *Al-Muṣannaf*, vol. 18, pp. 53-54.

[95] A Muslim worshipper has to perform five prayers a day, at dawn, after noon, mid-afternoon, before sunset, and mid-evening. Shortening the prayer means that a Muslim worshipper prays only the minimum required amount and not the conventional amount.

[96] For the valid performance of the five daily prayers, Islamic law requires worshippers to be in a state of ritual purity, *i.e.*, ablution (*wuḍū'*). It is for this reason that large-sized ships that sailed across the open sea had to be equipped with lavatories. Evidence about the existence of such facilities is found in Ibn Shahriyār's book: "I was told by Muḥammad Ibn Babishād that this *'allāma* [literally religious scholar, but in this context the ship's captain/pilot] had told him that, when he was crossing from India to China and passing one of these seas, the time for the dawn prayer came, and he went to the lavatory to make the ritual ablution [*fa-habaṭa ilā al-mutawaḍḍa'*]," Buzurg Ibn Shahriyār, *'Ajā'ib al-Hind*, p. 70.

notification of the captain [*bilā an yasta'mir fī dhālik aḥad*]. If the bucket fell accidentally into the sea, the passenger was free from indemnifying the shipowner.[97] As for laundry, the passengers could not spread out their garments on the bow without the captain's permission.[98]

Commercial transactions among merchants could also take place on board during the voyage. The execution of these transactions could not be undertaken without the involvement of the ship's master,[99] captain or the scribe who maintained the cargo book and was responsible for the safekeeping of cargo until it reached its destination. Even if the matter dealt only with personal belongings, the passengers were not entitled to act without notifying the captain and the scribe. As for articles found on board whose owners were not known, the finder was considered to have rights to the item.[100] One can gather from these regulations that the captain's jurisdiction extended to all manner of issues and concerns, and often involved his intervention in the capacity of judge, witness, and arbitrator of disputes.[101]

As in the ancient world, when the day of departure drew near, the traveler set about packing his bags.[102] In addition to clothing, the traveler had to provide his own supplies for eating, bathing, and sleeping—from pots and pans down to mattresses and bedding.[103] Occasionally, we read in the Geniza about passengers who could not provide themselves with personal effects owing to a "sudden departure":

> Moreover, I lacked provisions, because I was overtaken by our sudden departure. *God is my witness and judge*, not one loaf of bread went with me on board. A favorable wind started to blow at early dawn Friday so that we found no time to bake or to prepare a thing before sailing.[104]

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[97] Kindī, *Al-Muṣannaf*, vol. 18, p. 55.

[98] *Ibid.*, p. 55.

[99] Idris, "Commerce Maritime," p. 228: "with the confirmation and endorsement of the owner of the ship [*'alā taṣdīq ... wa iqrār rabb al-markab bi-dhālik*]."

[100] Kindī, *Al-Muṣannaf*, vol. 9, p. 206, vol. 18, pp. 55-56, 58.

[101] Raffles, "The Maritime Code of the Malays," p. 65: "The *mu'allim* shall be as a ruler or judge at sea, as it is his duty to direct the course of the vessel."

[102] Lionel Casson, *Travel in the Ancient World* (Baltimore: The Johns Hopkins University Press, 1994), pp. 154-155.

[103] Ibn Jubayr, *Riḥlat Ibn Jubayr*, p. 13.

[104] Goitein, *A Mediterranean Society*, vol. 1, p. 316; *idem*, "An Overseer of the Sultan's Ships," pp. 275, 280, doc. TS 24. 78, ll. 49-53; *idem*, *Letters*, p. 334, doc. Mosseri, L 101.

The loss of these personal effects, however, was regarded as a disaster worthy of mention. In a letter dated around 1120 C.E., the writer describes the loss of personal effects along with numerous losses of merchandise and money which was estimated at 200,000 *dīnār*s.[105] Needless to say, the shipowner for his part, as is documented in both the classical Islamic literature and the Cairo Geniza, had to provide his vessel with water and wood.[106]

Throughout the previous discussion an attempt has been made to outline the rights and duties of Muslim shipowners, sailors, and passengers. The shipowner had to guarantee the safe delivery of cargo at the destination and ensure the professional behavior of his employees on board. Otherwise, it was his responsibility to indemnify the cargo owner if any damages occurred owing to negligence during the journey. On the other hand, Islamic law ruled that the proprietor of a ship could seize the shipment if the lessee did not fulfill his financial obligation.

In principle, partnership in a vessel had to be based on trusteeship and a reciprocal relationship between, or among, the shareholders. The expenses paid for repair or the profit gained from commercial transactions had to be distributed in accordance with the shares of each partner. If a co-owner intended to sell his share, other partners would have preferential right of purchasing it.

Muslim jurists considered the hiring contract nullified if the fee and the duration of the hiring had not been fixed. However, Islamic practice disapproved of the Christian custom whereby the sailors received their wages or share the profit from the shipowner at the end of the journey. Furthermore, Islamic custom ruled that merchants had to pay a gratuity [*barṭīl*] to the sailors after reaching the destination safely. The amount paid to the sailors depended on the cost of living, quantity and quality of the shipment, and the duration of the voyage.

Likewise, maritime practice in the classical Islamic period defined the passengers' duties and rights. The passengers were required to obey the orders of the captain and to be assigned places on board as

[105] DK XI, ll 22-23: "*nazalū kullahum 'uryān, lā kuswa, wa-lā ghaṭā' wa-lā waṭā' wa-lā nafaqa.*"

[106] Ṭabarī, *Tārīkh al-Umam wal-Mulūk*, vol. 3, p. 1582; Kindī, *Al-Muṣannaf*, vol. 18, pp. 53-54; Abū al-Faḍl al-'Āllāmī, *'Ā-inī Akbarī*, vol. 1, pp. 289-291; Raffles, "The Maritime Codes of the Malays," pp. 64-65; Winstedt & Josselin, "The Maritime Laws of Malacca," p. 51; Goitein, "Portrait of a Medieval India Trader," p. 460.

fixed by the shipowner and captain. They were not permitted to wander on the deck since such an act might annoy other passengers and impede the movements of sailors. Nevertheless, the passengers were permitted to perform their prayers and other religious duties. At times, in case of an imminent danger, the Geniza documents report that the captain would take counsel with the passengers. Sometimes merchants forced the captain to turn back to the port of origin or to anchor at the nearest harbor in order to avoid fatal consequences.

CHAPTER THREE

MARITIME COMMERCIAL LAW

SECTION 1

The Construction of the Ship-Leasing Contract

The first question that we should address is the nature of the ship-leasing contract by which sea transport was effected.[1] Sea transport could be arranged by varying forms of that contract. A lessee could hire space for his goods or the goods of a third party, or charter the whole ship.[2]

Many of the difficulties which arise in relation to the contracts are due to doubts about the true effect of the documents used to express them. Sometimes the meaning of a word or phrase is obscure or ambiguous; sometimes the materiality of a clause, or its effect in relation to other clauses, is uncertain. Therefore, when the parties to the charter negotiate a ship-leasing contract, they have to consider the type of leasing [*kirā'* or *ijāra*][3], decide whether to hire space on

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[1] The word "contract" or "obligation" is mentioned in the Qur'ān in the beginning of *Sūra* V verse 1: "O ye who believe! fulfill (all your) obligations (*'uqūd*)." The term obligations (*'uqūd* sing. *'aqd*) is derived from the root verb *'aqada* which means to tie or bind. In addition to our divine obligations that arise from our spiritual nature and our relation to Allāh, in our own human and material life we undertake mutual obligations express and implied. We make a promise; we enter into a commercial or social contract; we enter into a contract of marriage: we must faithfully fulfill all obligations in all these relationships. In maritime terms, we may define a ship-leasing contract as: A contract of obligation by which each party transfers to the other the vessel for other than simple usage, transport, or pleasure.

[2] Goitein, "Portrait of a Medieval India Trader," pp. 461-462, doc. TS AS 156.238v, ll. 1-9: "Having sought God's guidance, I decided to travel to Fāknūr in the same boat in which we had arrived, for it had been blessed for me. I rented from them storage space from 150 *bahārs* (spice), 100 for pepper and 50 for various other goods."

[3] Where these terms bear a similar significance in English, Islamic law differentiates between them. The word *kirā'* means the leasing or hiring out of a thing. It aims at the beneficial use or enjoyment of that thing for a fixed period to time in return for a hiring fee. While the *ijāra* is the contract by which one person makes over to someone else the enjoyment, by personal right, of a thing or of an activity, in return for payment. The period of the *ijāra* must be stated, but no limit is necessarily fixed. See: A. M. Delcambre, "Kirā'," *The Encyclopaedia of Islam* vol. 5 (1986), p. 126; E. Tyan, "Idjār," *The Encyclopaedia of Islam* vol. 3 (1971), p. 1017.

board or charter the whole vessel, define the duration of the voyage, fix the fares and freight charges, and determine the ports of origin and destination. The lessee has to specify the nature of the transported shipment, while the shipowner provides his vessel with skilled sailors and furnishes it with the proper tackle needed for a safe passage. Altogether these rules are illustrated by the Egyptian Shāfi'ī jurist al-Minhājī:

> The ship-leasing contract has to be formulated as follows: 'So-and-so has chartered from so-and-so the entire vessel of either type of cargo vessel' [*muwarraqī*, or *bāṭūsī*], or other types of sea-crafts which were mentioned earlier in the Chapter on the Sales Contracts.[4] The contract should contain articles concerning the vessel's length, freight, and other integral equipment on board which are utilized to convey crops, passengers, and whatever is carried aboard such as wood, sheep, cows,[5] *et cetera* that are transported upstream or downstream on the blessed Nile. In addition, [the contractants] should fix the period of leasing and the sum which has either to be paid immediately, prior to the departure, after reaching the destination, or by installments.[6] Subsequently, the lessee is entitled to get what he chartered, make use of it, and load the cargo safely on board after scrutinizing, learning, and approving the contract which consists of offer [*īǰāb*] and acceptance [*qabūl*], and concluded with a mutual consent.[7] And if the ship-leasing contract stipulated to dispatch a specific consignment to a definite destination and the freight be paid all at once, the contractants commence the agreement stating: 'So-and-so has concluded a contract with so-and-so to transport

[4] Minhājī, *Jawāhir al-'Uqūd*, vol. 1, pp. 94-96.

[5] For the transport of domestic animals between Muslim port-cities see al-Wansharīsī, *Al-Mi'yār*, vol. 8, p. 64.

[6] Wansharīsī, *Al-Mi'yār*, vol. 8, p. 306, where the lessee and lessor concluded a leasing contract without mentioning the financial arrangements, such an agreement would be regarded invalid: "*wa-in sakatā fal-kirā' fāsid*"; *idem*, vol. 9, p. 117, he points out that the costs of transportation must be settled and affirmed in the contract before the departure.

[7] Consent of the two contracting parties is the basic requirement of every contract. It is the relationship of the offer by one party and the acceptance by the other. The offer, as defined by Muslim jurists, is the statement made in the first place by one of the two contracting parties raising the subject between the parties, while Islamic law defines acceptance as the statement made in the second place by the other party which completes the contract. It is required that acceptance must be in accordance with the offer. Furthermore, offer and acceptance can be accomplished in several ways: orally, in writing through appropriate acts through symbols. Silence may constitute acceptance if the circumstances are such to justify the conclusion that the party intends his silence to mean acceptance. For further details on Islamic legal contracts see Susan E. Rayner, *The Theory of Contracts in Islamic Law* (London: Graham & Trotman, 1991), especially pp. 103-109.

such-and-such crops aboard so-and-so's vessel,[8] from such-and-such port for such-and-such amount of money. This is a legal contract.'[9] Then the contractants add: 'The aforementioned lessor personally and his crew members should operate the vessel to transport the crops on board from the port of origin to the port of disembarkation.' *May God protect them.* Customarily, the gratuity is to be paid to the shipmaster and sailors. *And God knows best.*[10]

Al-Minhājī's formula of composing ship-leasing contracts theoretically seems to have outlined the basic principles that the chartering parties have to follow before putting the *kirā'* into effect. Nonetheless, this document lacks sensible solutions for problems that could have arisen between the parties to the contract prior to or during the voyage, or after arriving at the destination. Likewise, we are uninformed about the financial arrangements when the vessel encountered man-made dangers, inclement weather conditions, and rough sea. Thus, the following discussion aims to explore the judicial points of view concerning the types and rules of ship-leasing contracts, the factors affecting them, and the circumstances in which either party to the contract could breach it.

Types and Rules of Ship-Leasing

The jurisprudential literature draws a distinction between two basic methods of hiring. The first was a contract that specified a particular sea-craft [*safīna bi-ʿaynihā*] to transport cargo from one point to another. The jurists absolved the shipowner of responsibility to provide his lessee with a substitute vessel if that specific chartered sea-craft was wrecked.[11] In this case the contract would immediately be nul-

[8] Ṭāher (ed.), *Kītāb Akrīyat al-Sufun*, p. 17; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 8, pp. 81-82: "if so-and-so charters a ship, or a shipowner brought his ship for chartering and the lessee did not assert he would transport his freight on that particular ship, this *kirā'* is considered guaranteed [*maḍmūn*] unless a stipulation has been made on a specific ship. According to the Mālikī school, the lessee has either to call for the ship's name, or to point out the shipowner by saying: 'charter me your such-and-such or your X specific ship.'"

[9] The Arabic term as it appears in the text is "*muʿāqada sharʿiyya*" and it can be translated as a legal or valid contract. The actual significance of this phrase is that both parties to the contract must conform to the legal nature of the contract by accepting the religious rules and the customary practice.

[10] Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, pp. 293-294.

[11] Ṭāher (ed.), *Kītāb Akrīyat al-Sufun*, p. 16; Shammākhī, *Al-Īḍāḥ*, vol. 3, p. 575; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 281.

lified [*fa-yufsakh al-kirā' bi-halākihā*].[12] On the other hand, the lessee had the right to place his shipment on board[13] and to rent that vessel to a third party.[14] The second method stipulated that the shipowner undertake the responsibility for the transport of passengers and shipments to their agreed-upon destination, regardless of inclement weather conditions, man-made hindrances, or damage to the vessel. This method, which was known as personal guarantee [*maḍmūn fī dhimmatihi*],[15] is documented in a Geniza letter sent from Messina to Mazara, Sicily 1153 C.E.:

> This is to inform you—*may God ... keep you*—that we arrived in Messina in safety and good health—for which we must thank God, and not ascribe it to our own merit or good deeds—after we had passed eight days on our journey, for a rainstorm kept us back in Baqṭas [Patti]. We paid the Christian skipper of the boat a fare of 2 *rubā'īs* less one-quarter and *stipulated* that he should let us disembark at the lighthouse near Messina.[16]

The hire of transport is further divided into two subcategories:

A) *Contracts Specifying the Destination*—The principle guiding this type of leasing was to reach the destination without interference by coercive factors and political circumstances. The fee was only payable upon arrival at the destination.[17] A second group of jurists argued that even

[12] Abū 'Umar Yūsuf Ibn 'Abd Allāh Ibn Muḥammad Ibn 'Abd al-Barr, *Kitāb al-Kāfī fī Fiqh Ahli al-Madīna al-Mālikī* (Riāḍ, 1980), vol. 2, p. 753; Saḥnūn, *Al-Mudawwana*, vol. 4, pp. 496-497; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 281; Shammākhī, *Al-Īḍāḥ*, vol. 3, p. 575; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 17, 25-26; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 8, pp. 81-82, 498.

[13] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 17.

[14] *Ibid.*, pp. 17-18; Saḥnūn, *Al-Mudawwana*, vol. 4, p. 442.

[15] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 15; Wansharīsī, *Al-Mi'yār*, vol. 8, pp. 300-301.

[16] Goitein, "Sicily and Southern Italy in the Cairo Geniza Documents," *Archivio Storico per la Sicilia Orientale* 67 (1971), p. 28, doc. ENA 151 (2557); *idem*, *Letters*, p. 328.

[17] Saḥnūn, *Al-Mudawwana*, vol. 4, p. 493-494, 496; Ibn Rushd, *Al-Payān wal-Taḥṣīl*, vol. 8, p. 498, vol. 9, p. 149; Sughdī, *Al-Nutaf*, vol. 2, p. 573; Ibn 'Abd al-Barr, *Al-Kāfī*, vol. 2, p. 752; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 26; Ibn 'Āsim, *Tuhfat Ibn 'Āsim*, pp. 578-579; Wansharīsī, *Al-Mi'yār*, vol. 8, pp. 300-301; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, pp. 280-281; Ibn 'Askar, *Ashal al-Madārik*, vol. 2, pp. 333-334; Ibn al-Barrāj, *Al-Muhadhdhab* (Qumm: Mu'assasat al-Nashr al-Islāmī, 1989), vol. 1, p. 483: "If a person concluded a ship-leasing contract to transport cargo without specifying a ship, the lessor was not entitled to collect the freight charges if he did not reach the destination." An identical ruling is mentioned in Jewish theological sources from the Talmudic period stating that in case of the charterer of a particular ship for the transport of a cargo of wine without a specific designation, then, even if the

if the vessel did not reach the destination, as long as it had sailed across the sea or along the sight of the coast, the shipowner should collect part of the freight costs in accordance with the distance covered, particularly when the contract was signed upon leasing a specific vessel.[18] The third legal opinion distinguished between sailing across the sea and along the coast. Since the distance covered at high sea was unknown [*majhūl*], the lessor could not claim the freight charges. When the contract involved cabotage and sailing close to the coastline so that the range between the port of origin and destination could be estimated, the shipowner was entitled to collect the fee based on the distance covered.[19]

B) *Seasonal Leasing Contracts*—In this type of contract a vessel was leased for a fixed period which could last from a day to several years.[20] The freight costs could either be disbursed upon receipt, by installments, or after the expiration of the leasing period.[21] While the lessee might gain tremendous profits, he could also incur heavy losses when the weather conditions turned unfavorable.[22] Despite the possible risk, the *fuqahā'* approved this type of leasing as long as *natural factors beyond human control* were taken into consideration.[23] If the contract expired during the journey, the contractants could renew their agreement; otherwise, the lessee had to pay an additional fee to make

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freight money had already been paid, the owner of the ship must refund it to the charterer if the ship sank in the course of the voyage. See Isaac Herzog, *The Main Institution of Jewish Law* (New York: The Soncino Press, 1967), vol. 2, p. 269; Raphael Patai, "Ancient Jewish Seafaring and Riverfaring Laws," in *By Study and also by Faith; Essays in Honor of Hugh W. Nibley*, ed. John M. Lundquist & Stephen D. Ricks (Salt Lake City, 1990), p. 392.

[18] Saḥnūn, *Al-Mudawwana*, vol. 4, p. 493; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 26-27, 29; Abū Muḥammad ʿAlī Ibn Aḥmad Ibn Saʿīd Ibn Ḥazm al-Andalusī, *Al-Muḥallā bil-Āthār* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1988), vol. 8, p. 26; Kindī, *Al-Muṣannaf*, vol. 21, p. 155; Ibn al-Barrāj, *Al-Muhadhdhab*, vol. 1, p. 483; Ibn ʿAbd al-Barr, *Al-Kāfī*, vol. 2, p. 753.

[19] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 26-27; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 8, p. 498; Wansharīsī, *ʿUddat al-Burūq fī mā Jumiʿa mā fī al-Madhhab min al-Jumūʿ wal-Furūq* (Beirut: Dār al-Gharb al-Islāmī, 1990), pp. 554-555.

[20] Shammākhī, *Al-Īḍāḥ*, vol. 3, p. 531; Ibn Mammātī, *Qawānīn al-Dawāwīn*, pp. 348-349.

[21] Muḥammad Bāqir al-Majlisī, *Milādh al-Akhyār fī Fahm Tahdhīb al-Akhbār* (Cairo, 1985), vol. 11, pp. 394-396; Aḥmad al-Khawansārī, *Jāmiʿ al-Madārik fī Sharḥ al-Mukhtaṣar al-Nāfiʿ* (Ṭeherān, 1985), vol. 3, p. 443.

[22] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 17.

[23] *Al-Fatāwā al-Hindiyya*, vol. 4, p. 469; Udovitch, "An Eleventh-Century Islamic Treatise," p. 43.

up the difference. The shipowner could not unload the cargo, nor impose cumbersome fares and conditions on the lessee. The sum owed had to be fixed either on the basis of daily leasing or the distance covered.[24]

Freight Charges

The payable sum had to be fixed in accordance with the standard rate at the port of embarkation on the day of departure.[25] The owner of the vessel could collect the charges in cash or receive a portion of the cargo.[26] Various forms of freight charges were used during the classical Islamic period. A group of *fuqahā'* stated that "the shipowner collects the duty whenever he wants [*li-rabbi al-safīna an ya'khudhahu matā shā'*]," *i.e.*, before the departure, by installment, or after reaching the destination.[27] Another group ruled that the lessor had the choice to collect the dues upon signing the contract, or at the journey's end.[28] A third opinion permitted the lessor to receive the payable amount only after delivering the shipment safely "at the destined port [*bi-annahā ʿalā al-balāgh*]."[29] A fourth point of view "allowed hiring a vessel on the condition that the freight charges be paid immediately; otherwise, it is disallowed to stipulate delaying the fees [*wa-idhā iktarā safīna ... ʿalā an yanqudahu jāza, wa-in sharaṭa ta'khīrahu lam yajuz*]."[30] The contract was considered invalid if the lessee insisted in paying the shipowner after the departure.[31]

The majority of the Mālikī authorities favored the fourth category in which the lessor receives the freight charges before the ship sets sail. They "disregarded the local custom when it approved the delay

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[24] *Al-Fatāwā al-Hindiyya*, vol. 4, pp. 428-429.

[25] Wansharīsī, *Al-Miʿyār*, vol. 9, p. 117.

[26] *Ibid.*, vol. 8, p. 64, vol. 9, p. 117; Rafiʿ, *Muʿīn al-Ḥukkām*, vol. 2, p. 525; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 132-133; vol. 9, p. 59; Ibn ʿAbd al-Barr, *Al-Kāfī*, vol. 2, p. 752; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 17-18; Saḥnūn, *Al-Mudawwana*, vol. 4, p. 410.

[27] Rafiʿ, *Muʿīn al-Ḥukkām*, vol. 2, p. 525; Goitein, "Misḥar ha-Yehudim," pp. 186-188.

[28] Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 281.

[29] Rafiʿ, *Muʿīn al-Ḥukkām*, vol. 2, p. 525; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, p. 150; Ibn ʿĀṣim, *Tuḥfat Ibn ʿĀṣim*, pp. 580-581; "*Le frêt n'est dû qu'à l'arrivée. Si quelque accident survient au navire, l'affréteur ne doit rien comme frêt*"; Goitein, "Misḥar ha-Yehudim," pp. 378-379, doc. TS Arabic Box 53, f. 51, ll. 10-16, v., ll.

[30] Ibn ʿAbd al-Barr, *Al-Kāfī*, vol. 2, p. 752; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 64.

[31] Saḥnūn, *Al-Mudawwana*, vol. 4, p. 410.

of payment until the vessel has reached the destination [*wa-in kāna sunnat al-balad ta'khīr al-kirā' azunnahu lā yajūz*]."[32] They argued that travel on the high seas was risky and neither the shipowner nor the lessee could guarantee a safe delivery of the consignment at the destination:[33]

> If the leasing contract was signed upon transporting a specific cargo, the lessee had to prepay the shipowner unless the former clearly stipulated postponement of the payment. ... Likewise, Ibn al-Qāsim disapproved of postponing the payment even for one or two days unless the lessee had guaranteed [to pay] the fees at the destination or deposited the payable sum in the hands of a third party.[34]

The judicial literature rarely mentions the option of payment by credit. The expenses of transportation, thus, had to be paid prior to the sailing season and the lessee cannot demand that the shipmaster sail in "unfavorable weather conditions and rough sea which could create an unsafe passage."[35]

An account statement with instructions to an agent in Alexandria from someone in the service of Joseph Ibn ʿAwkal,[36] dated Shaʿbān[37] 19, 429/May 9, 1038, reveals that the Geniza merchants used three methods of paying the freight costs.[38]

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[32] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 17-18.

[33] *Ibid.*, pp. 17-18: "*li-anna al-ghadr [? gharar] yadkhulahu, lā yadrī kayf yakūn dhālika al-shay' aw hal yaslam ilā dhālik al-ajal?*"

[34] *Ibid.*, p. 18; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 132-133; Ibn ʿAbd al-Barr, *Al-Kāfī*, vol. 2, p. 752: He confirms Ibn al-Qāsim's point of view and adds that the contract must be nullified if the shipowner does not take his portion of food before setting sail.

[35] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 20.

[36] Abū Yaʿqūb Abū al-Faraj Yūsuf b. Yaʿqūb b. ʿAwkal, apparently of Persian origin, had migrated to Tunisia sometime in the middle of the tenth century C.E., and then came to Egypt with the Fāṭimids after 969 C.E. In addition to being an oustanding member of the Egyptian business community, Joseph Ibn ʿAwkal was also a prominent Jewish communal leader, acting as intermediary between the Maghribī Jewish communities and the yeshivas of ʿIrāq and Palestine. His archive, which is considered the oldest business archive in the Cairo Geniza, comprises sixty-one items chronologically distributed from the 980s to 1076 C.E. See Norman Stillman, "The Eleventh-Century Merchant House of Ibn ʿAwkal," *Journal of the Economic and Social History of the Orient* 16 pt. 1 (1973), pp. 16-19.

[37] The Muslim months are as follows: Muḥarram, Ṣafar, Rabīʿ al-Awwal, Rabīʿ al-Thānī, Jumādā al-Ūlā, Jumādā al-Ākhira, Rajab, Shaʿbān, Ramaḍān, Shawwāl, Dhū al-Qaʿda, and Dhū al-Ḥijja.

[38] Note: neither the name of the sender nor of the person to whom it was written appears in the document.

(1) The following is what I have transferred to be received from the shipowners for provisions and freight expenses (2) and what I have left in the warehouses under the supervision of Abū Sa'īd Khallūf (3) b. Zakariyyā al-Ashqar (*may his soul find rest*)—*may God strengthen him.*

(4) Qāsim b. Zāy: 28 bales of Miṣārī flax, one of which is a Nile load, (5) in all, 9-⅔ loads. In addition to this he had one Nile load of pepper belonging to me. (6) In all: 10-⅔ loads for which there was a freight charges of 19½ *dīnār*s, one *qīrāṭ* and *ḥabba.* (7) He also had a basket of *sukk* belonging to me. He received one *dīnār* as a downpayment on the freight. His partner, (8) Aḥmad Qasandalās, received from my Master the Elder in Fusṭāṭ 5 *dīnār*s, in all: (9) 25 *dīnār*s, one quarter, one-sixth, one-eighth, and one *ḥabba.*

(10) I have transferred to you, that you should receive from 'Umar b. Jawkal 17 bales of flax out of which 6 are (11) Nile bales. Furthermore, I have received from him 19 land bales and one load of (12) pepper, in all: 14 loads. He will receive from you from what you (13) have on our account 25⅔ *dīnār*s.

(14) I have transferred to you to be received from Abū 'Alī b. al-Jalūza 16 bales of flax (15) at varying rates of freight, whose details are recorded with him as I have written (16) to him. He shall receive from you the money for the freight, 15 *dīnār*s, less one *qīrāṭ*, and one *ḥabba.*

(17) I have transferred to be received by Ibn al-Qaddār from you a 50% downpayment on the freight charges of 20 Nile (18) loads at different freights totaling 32 *dīnār*s. He received from my Master the (19) Elder—*may God make his honorable position lasting*—in Fusṭāṭ 5½ *dīnār*s and ⅔, and from me one *dīnār.* (Page 2) (1) In all he is to receive 37½ *dīnār*s and ⅓. I myself received (2) from him all of the flax and other goods which he had transported for me. (3) I have sent you a draft to take from 'Abdūn al-Nashsha 18 land bales, (4) which are equal to 6 Nile loads. He is to receive from you from our joint account for (5) previous freight 11 *dīnār*s.

(6) I transferred to you to receive from Abū Isḥāq, the associate of the Elder Abū al-Faraj b. 'Allān, (7) the 3 land bales which be brought with him on the *qārib* (boat) of Ibn Yadir. (8) I have also left in his care 51 bales in the warehouse. In all, you are to receive from (9) the shipowners mentioned above 82 bales. (10) In total: 100 bales, 33 bales, and one basket of *sukk* (11) designated for my Master the Elder, Abū Ya'aqov—*may God make his honored position lasting.* Furthermore, I have left (12) a bundle of flax weighing 60 *raṭl*s in the warehouse. This flax is the remainder (13) of the bale which I brought with me by land.

(14) I stipulated with Ibn al-Jalūza that he would not charge for the porters' fee (15) for bringing them into port, nor packers' fee, nor is he to have any financial claim. However, he is to receive storage fees from the time (16) he enters (the port) until the time he takes it. Likewise, I stipulated with Ibn (17) Jawkal, that with regard to the 17 bales remaining with him, he is not to receive for them (18) porters' fees for bringing them into port, nor is he to have any financial claim, nor

> packers' fees, and no storage fees. (19) ... except for the month of Shaʿbān, 429 (page 3) (1) on 17 bales of "minute spices." He has already received from me all (2) that was due on that for transportation, and likewise, for the two warehouses up to the middle of Shaʿbān (3) 429 ... . I have left with 5 *dīnārs* to be paid to you (5) for my Master the Elder—*may God make his honored position lasting.*[39]

From this invaluable documentary evidence, we learn that the shipowner received in Fusṭāṭ all the freight charges for the entire journey in advance (p. 1, ll. 4-9); accordingly, the agent in Alexandria had to receive the cargo. In the second instance (p. 1, ll. 10-13, 14-16 and p. 2, ll. 3-5), the shipowner received in Fusṭāṭ only payment for the trip to Alexandria. In Alexandria, the merchant's agent had to pay the entire cost of shipping from there to al-Mahdiyya. With the last method (p. 1, l. 17, and p. 2, ll. 1, 3), the shipowner received a part of the transportation fees in Fusṭāṭ which was to be supplemented in Alexandria by the agent to one half of the total cost.[40] This sort of payment arrangement, known as *sulfa* (advance or downpayment), was common among the Geniza merchants. The lessor received part of the transportation fees before the ship set sail, while the remaining part was paid at the agreed destination.[41]

Among the factors that affected the payment of the transportation fees were insolvency of the lessee, accidental fire on board, misconduct of sailors, hostile attacks, inclement weather conditions, and jettison.

Insolvency of the lessee—The law dictated that a merchant who was unable to pay duty charges had to pledge the goods to the lessor. The owner of the vessel was "more deserving of the shipment than the

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[39] Norman R. Stillman, "East-West Relations in the Islamic Mediterranean in the Early Eleventh Century. A Study in the Geniza Correspondence of the House of Ibn ʿAwkal," Thesis Submitted for the Degree Doctor of Philosophy (The University of Pennsylvania, 1970), pp. 412-415. This letter was published by Goitein, "Mishar ha-Yehudim," pp. 186-187, doc. TS Arabic Box 53, f. 51.

[40] Goitein, "Mishar ha-Yehudim," pp. 180-183, doc. Bodl. MS Heb. d 65 (Cat. 2877), f. 18, l. 24, 187-188; *idem*, *Letters*, p. 282; Ben-Sasson, *Yehudei Sitzilya*, pp. 219-226, doc. Bodl. MS Heb. d 65 (Cat. 2877), f. 17 margin.

[41] Goitein, *Letters*, p. 258, doc. Bodl. MS Heb. c 28 (Cat. 2876), f. 55; *ibid.*, p. 310; Ben-Sasson, *Yehudei Sitzilya*, pp. 92-96, doc. Bodl. MS Heb. a 2, f. 28, l. 13; *ibid.*, p. 133, doc. TS AS 151.10, l. 4; *ibid.*, pp. 194-199, doc. TS 13 J 17, f. 3, ll. 25-26; *ibid.*, pp. 219-226, doc. Bodl. MS Heb. d 65, f. 17, ll. 2-6, 15; *ibid.*, pp. 233-237, doc. Bodl. MS Heb. d 66 (Cat. 2878), f. 15v, ll. 5-6; *ibid.*, pp. 275-288, doc. Bodl. MS Heb. c 28, f. 61, ll. 23-26; *ibid.*, pp. 340-348, doc. TS 20.122, ll. 13-16.

merchant's creditor."[42] Pledging the commodities to the shipowner was apparently a legal act which took place prior to sailing. Usually, the quantity of goods bestowed to the lessor did not exceed what he deserved for his service.

Fire—Fire on board was ordinarily confined to the caboose for baking and cooking.[43] If the vessel caught fire due to sparks carried by wind, neither the cook nor the shipmaster was liable for the loss of the freight,[44] regardless of whether the accident occurred in the absence or the presence of its owner.[45] When it was proven that the damage was intentional the culprit had to compensate the consignor and shipowner alike.[46]

Misconduct of Passengers and Sailors—Misbehavior on the part of the lessee may have had incriminating consequences for the lessor. Without notifying the shipowner, the lessee sometimes acted independently by leasing another ship when the former vessel was endangered. This individual conduct did not exempt the lessee from paying the duty unless such an article was stipulated in the ship-leasing contract. Customarily, when the matter involved a transshipment, the lessee had to pay the transportation fee based on the distance covered.[47]

Maritime practice required the shipmaster to avoid anchoring at an *unsafe port* in which the passengers might have been expected to pay high customs to the local governor. If he anchored in an *unsafe port* without taking counsel with the passengers, he would be liable to remunerate them for the difference in taxes, especially when the local governor levied higher tariffs than the standard rate. Above all, the shipowner was required by contract to reach the destination.[48]

Sailing errors frequently occurred owing to navigational misconduct of the captain and crew.[49] One such incident involved a ship

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[42] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 10, pp. 547-548.

[43] Sarakhsī, *Al-Mabsūṭ*, vol. 15, pp. 80-81.

[44] Kindī, *Al-Muṣannaf*, vol. 18, p. 56: "If the wind, while the baker [cook] was baking, transported sparks from the fireplace and enflamed the ship, the cook was not responsible for the damage since he was licensed to use fire on board."

[45] *Al-Fatāwā al-Hindiyya*, vol. 4, p. 503.

[46] Kindī, *Al-Muṣannaf*, vol. 21, p. 155.

[47] *Al-Fatāwā al-Hindiyya*, vol. 4, p. 503.

[48] Shammākhī, *Al-Īḍāḥ*, vol. 3, pp. 580-581; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 300.

[49] Gil, *Eretz Yisrael*, vol. 3, pp. 264-267, doc. ULC Or 1080 J 17, ll. 7-8: "I sailed in the ship of Ibn al-Zaffāt Yaḥyā al-Sakandarānī and discovered that he was very negligent, so I disembarked [*wa-rakibtu fī markab Ibn al-Ẓaffāt Yaḥyā al-Sakandarānī wa-raʾaytahu tawānā kathīr nazaltu minhu*)."

that sailed beyond its destination. Had the incident resulted from the *intentional negligence* of seamen the shipmaster was bound to transport the passengers and shipments to the destination. The law did not entitle the owner of the vessel to charge his passengers for the difference in the distance.[50] Furthermore, experienced Muslim pilots like Ibn Mājid were aware of the safety procedures the captains had to follow when they sailed along the coast or arrived at the destination after sunset. For safety measures a shipmaster of coasters was advised to land safely at one of stopovers, or at the destination, by securing his vessel with an anchor providing that the craft is steady enough and the waves effect would not cause damage to the cargo aboard. Ibn Mājid writes:

> At night take care lest you leave the ship without a *sanbūq* out or lest you find yourself with no equipment dependent on [*māda*] anchor or plumbline. If you see anything of the reef or the shoals under the water, then stay where you are and make for the land in the beginning of the [next] day. If you fear that your anchor (grapnel) will remain in the depths, connect the anchor to the "iron" (bower) and use the *sanbūq*.[51]

This in return means that a misconduct of the captain in anchoring his vessel properly, which often caused damage to the shipment on board, required him to compensate the unfortunate cargo owners.

Documentary and archeological evidence confirm that Islamic ports were closed after sunset for security reasons.[52] A long chain was

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[50] Aḥmad Ibn Ḥajar al-Haythamī, *Al-Fatāwā al-Kubrā al-Fiqhiyya* (Cairo, 1938), vol. 2, p. 280.

[51] Ibn Mājid, *Al-Fawā'id*, p. 364.

[52] Muqaddasī, *Aḥsan al-Taqāsīm*, p. 163; describing the entrances of ports of Tyre and Acre, he writes: "He (the Egyptian governor Aḥmad Ibn Ṭūlūn [254-270/868-884]) had seen the fortifications of Tyre, and the walls that are there carried round so as to protect the harbor; and he wished to make the harbor at Acre as impregnable as that of Tyre. He summoned the artificers of the whole province; but when the matter was laid before them, they all averred that none in those days knew how the foundations of a building could be laid in water. Then one mentioned to him the name of my grandfather, Abū Bakr the Architect. ... He [Abū Bakr] then built a bridge across the gate, so that every night the ships enter within the harbor, and a chain is drawn across as in Tyre." Nāṣīr-i Khosraw, *Book of Travels (Safarnāma)*, pp. 16-17: "The walls [of Acre] are extremely strong, and the southwestern portion is on the sea. To the south is a *mīnā* [port]. Most of these coastal towns [of Palestine] have a *mīnā*, which is like a stable for ships. Built right against the town, it has walls out into the water and an open space of fifty ells without a wall but with a chain stretched from one wall to the other. When a ship is about to enter the *mīnā*, they loosen the chain so that it goes beneath the surface of the water, allowing the ship to pass over; afterwards the chain is raised again lest strangers make untoward attempts on the ships." A similar description is reported by Ibn Jubayr, *Riḥlat Ibn Jubayr*, pp.

suspended between the breakwater and the city walls to prevent enemy and buccaneer ships from penetrating the harbor. Merchant ships arriving in late afternoon often had to anchor outside the port until the next day. Occasionally, the overnight delay would cause damage to the cargo. If the captain refrained from entering the port due to safety measures, and if the passengers "collaborated" with him, they would have to pay the entire freight fees. If the port was open and a ship could still enter the dock safely, but the shipmaster insisted on staying overnight outside the port, he would be liable for the damage caused to the shipments. However, if the ship reached the destination after the harbor was being closed, the passengers were responsible for the damage.[53]

Piracy and Enemy Attacks—As the second greatest threat to commercial ships, hostile attacks would often make the leasing contract impractical. Jurists who examined this matter focused their attention on the financial arrangements following the raid on a merchant vessel. Their discussion centered on three basic questions: What should the shipowner and merchants do when their vessel was compelled to head back to the port of embarkation? How should the transportation charges be arranged when the ship was crossing the sea or sailing along the coast? And who was liable if the merchants sought to turn back to the port of origin while the shipmaster rejected their appeal?

Ibn Rushd offers six possible solutions to these questions. The passengers were obliged to pay the entire fee if they agreed voluntarily to the request of the shipowner to head back to the port of embarkation. If the shipowner prevented the passengers from con-

277-278: "Between the two towers stretches a great chain which, when raised, prevents any coming in or going forth, and no ships may pass save when it is lowered. At the gate stand guards and trusted watchers, and none can enter or go forth save under their eyes. The beauty of the site of this port is truly wonderful. Acre resembles it in situation and description, but cannot take large ships, which must anchor outside, small ships only being able to enter. The port of Tyre is more complete, more beautiful, and more animated." Concerning archeological evidence of the towers in the port of Acre, see Elisha' Linder & Avner Raban, "Seqer Tat Yami bi-Namel 'Akko 1964," in *Ma'ravo shel Galil ve-Ḥof ha-Galil* (published by ha-Ḥevera la-Ḥaqirat Eretz Yisrael ve-'Atiqoteha, 1965), pp. 186-188; Avner Raban, "Nemlei 'Akko," in *Qadmoniot ha-Galil ha-Ma'ravi*, (published by The Ministry of Defense, 1986), pp. 180-187; *idem*, "Namel 'Akko," *Qardom* 24-25 (1983), p. 142. For disasters caused to commercial vessels by entering the harbor, see Goitein, *A Mediterranean Society*, vol. 1, p. 319.

[53] Wansharīsī, *Al-Mi'yār*, vol. 8, p. 306.

tinuing the voyage, the former was not entitled to collect the fee. If the passengers appealed to the shipowner to head back to the port of embarkation, they were obliged to compensate him. If the passengers realized that the danger of pirates or the enemy was unavoidable and appealed to the shipmaster to head back, the leasing contract would be nullified,[54] while if they found shelter and were able to sell their commodities, they would have to compensate the shipowners in proportion to their proceeds. If the ship anchored at the first stopover and the merchants who were able to disembark with their shipments did not do so, they would have to pay the *kirā'* going and coming. And if the shipowner prevented the merchants from unloading their commodities at the first stopover, they would not be entitled to collect the fee.[55]

Pirate and enemy ships lurking in close proximity to merchant ships at the destination could force the commercial vessels to seek protection in safer Islamic ports, to sail back to the port of embarkation, or divert their course.[56] If a merchant intended to unload his shipment at a safer port close to the original destination, he would be required to pay the entire fee. Another legal opinion required that the lessee pay the charges in proportion to the distance covered. The ship-leasing contract, however, remained valid and both parties had to wait until the threat was dispelled.[57] When the pirates seized the property on board but released the vessel the lessee was obliged to pay the *kirā'*.[58] If the sea robbers seized both the vessel and its shipments, the lessee was exempted from paying the duties.[59]

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[54] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 19.

[55] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 148-150; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 19, 22. On page 20 it is stated that if the ship has covered part of the distance and the shipowner realized that threatening ships are lurking somewhere on the way and the risk is unavoidable, the leasing contract should be nullified even if one of the parties to the contract insisted on continuing the voyage. The payment must also be arranged by the two parties.

[56] Ben-Sasson, *Yehudei Sitzilya*, pp. 15-20, doc. TS NS 149.1.

[57] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 20; Rafi', *Mu'īn al-Ḥukkām*, vol. 2, p. 526.

[58] Abū 'Abd Allāh Muḥammad al-Anṣārī al-Raṣṣā', *Sharḥ Ḥudūd Ibn 'Arafa* (Beirut: Dār al-Gharb al-Islāmī, 1993), vol. 2, p. 525; Wansharīsī, *Al-Mi'yār*, vol. 8, p. 302; Saḥnūn, *Al-Mudawwana*, vol. 4, p. 497.

[59] Raṣṣā', *Ḥudūd Ibn 'Arafa*, vol. 2, p. 525; Wansharīsī, *Al-Mi'yār*, vol. 8, p. 302: "If the pirates seized a vessel and its shipments, the merchants would be exempted from paying the duties because the principle [of leasing a ship] was to arrive at the destination safely. If the vessel and its contents were seized at the port of disembarkation, this impoundment is similar to a captured vessel on the high sea."

Pirate operations extended beyond the high seas to include inland waters. Since rivers and artificial channels fell under the jurisdiction of the *sulṭān*, he was expected to secure the vessels and their contents by erecting watchpoints and lighthouses equipped with armed personnel.[60] If a ship was plundered by bandits, the owner of the vessel had to bring the case to the governor; otherwise, the shipowner would be liable for indemnifying the cargo owner.[61]

Political turmoil and external invasion normally raised the transportation fees. For instance, the political instability that resulted from the Banū Hilāl and Sulaym devastation of Tunisia in the 1050s C.E.[62] and the emergence of piracy off the Maghribian shores not only forced shipowners to provide their vessels with sufficient protection, but also required them to pay a heavy tribute, called *ghifāra*, to Jabbāra freebooters who served as protectors against other pirates. The geographical range of their activities extended between Barqa and Tunisia.[63] Thus, the more the shipowners paid to the protectors the more costly shipping charges became.

During the Norman conquest of Sicily from 1061-1091 C.E., the greater part of the local Muslim and Jewish communities had taken refuge in Ifrīqiyya (Tunisia).[64] The abrupt departure of the Sicilian Muslim and Jewish immigrants between 1061 and 1071 C.E. was marked by an increase in shipping charges. The shipowners doubled, or occasionally tripled, the fares. Letter 220 from the archive of Nahray b. Nissīm,[65] dated 1065-1071 C.E., describes how the shipowners took advantage of the political turmoil in Sicily by raising the freight charges:

> The news from Sicily is evil tidings. The enemy seizes control over the island except for Palermo, Mazara, and Castrogiovanni which remain

[60] Barrāwī, *Ḥālat Miṣr al-Iqtiṣādiyya*, p. 201.

[61] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 63-64; Stern, "Three Petitions of the Fāṭimīd Period," pp. 172-178, doc. TS Arabic Box 42, f. 158; G. Khan, *Arabic Legal and Administrative Documents in the Cambridge Genizah Collections* (Cambridge: Cambridge University Press, 1993), pp. 330-331.

[62] Abun-Nasr, *A History of the Maghrib*, pp. 69-71.

[63] Goitein, *A Mediterranean Society*, vol. 1, pp. 327-328; Ben-Sasson, *Yehudei Sitzilya*, pp. 350-358, doc. TS 16.13v, l. 22.

[64] Ahmad, *A History of Islamic Sicily*, pp. 48-53.

[65] Nahray b. Nissīm was a banker and a wholesale merchant of high standing, whose commercial activities lasted for a period of fifty years (1045-1096 C.E.). The Nahray corpus now contains a little over 400 items.

governed by Muslims. Immigrants who move to the coasts of Ifrīqiyya pay three ounces of gold or more per passenger.[66]

Conditions of the Weather and Sea—In cases of a *force majeure* such as rough seas, storms, and waves, a vessel could divert its course. It might turn back to the port of origin,[67] sail beyond the agreed destination, or find shelter at one of the coastal stopovers or ports. If the ship sailed across the sea or along the coast, its owner would not be entitled to collect the fees if he voluntarily headed back to the port of origin.[68] Unlike the majority of jurists from other law schools, the Ḥanafīs maintained that the shipowner did not have the right to collect the duty as long as the lessee or his agent was not aboard. However, if one of them accompanied the shipment the payment could then be calculated commensurate with the distance covered.[69] The return of a ship to the port of embarkation, as one Geniza letter shows, was often catastrophic for the merchant concerned since he might miss the business season and be unable to refund the customs, fares, or rather the parts of the fares paid before the journey.[70]

The basic rule of coastal navigation was that even if the merchant and his goods were taken only part of the way, he was to compensate the shipowner with a partial payment since they were brought closer to their ultimate destination.[71] Other jurists suggested that the market price played an integral role in fixing the amount of money paid to the lessor. If the ship did not drop anchor at the destination, the merchants had to pay the fares in proportion to "the benefit they derived from their sale [*bi-qadr mā intafaʿū bihi*]."[72] That is to say, if the merchants made less profit at this port than they would have at destination, they had to pay the *kirāʾ* in proportion to their proceeds.

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[66] Ben-Sasson, *Yehudei Sitzilya*, pp. 48-54, doc. Mosseri II, 128 (L 130), ll. 15-18.

[67] Goitein, *A Mediterranean Society*, vol. 1, pp. 322-323; *idem*, *Letters*, p. 322; Ben-Sasson, *Yehudei Sitzilya*, pp. 584-588, doc. TS 13 J 15, f. 9v, ll. 4-6.

[68] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 147-148; Ṭāher (ed.), *Kītāb Akriyat al-Sufun*, pp. 22, 24.

[69] Sarakhsī, *Al-Mabsūṭ*, vol. 16, p. 10; *Al-Fatāwā al-Hindiyya*, vol. 2, p. 316, vol. 4, p. 503; Awzajandī, *Fatāwā Kāzī-Khān*, vol. 2, p. 286.

[70] TS 10 J 16, f. 15, ll. 9-10 (*India Book*, doc. 222): "Oh my brother, how hard it befell on my heart when the vessels turned back [to the port of embarkation] owing to the costly expenses, provisions, customs, and freight costs which I could not get refunded even a *dirham* [*yā akhī mā dakhal ʿalā qalbī min rujūʿ al-marākib li-anna marrat minnī muʾan kathīra wa-nafaqa wa-zād wa-maks an ʿaẓīm shayʾan lā naqdir minhu dirham*]."

[71] Ṭāher (ed.), *Kītāb Akriyat al-Sufun*, p. 26-27; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 8, p. 498; Wansharīsī, *ʿUddat al-Burūq*, pp. 554-555.

[72] Ṭāher (ed.), *Kītāb Akriyat al-Sufun*, p. 24.

Another point of view maintains that the passengers only have to pay the difference of the distance. The last legal attitude not only exempts the merchants from paying the difference of distance if their sale was much less than the purchase price, but also permits them to nullify the contract.[73] Al-Wansharīsī (d. 914/1508) adds two more solutions. The first opinion decrees that the merchants only had to pay the *kirā'* as established in the contract, while the second point of view provides that if the merchants' proceeds were greater than at the original destination, the shipowner could collect the fees as established in the contract plus an additional amount of money fixed by the merchants.[74]

Even if the weather caused a long delay, the shipowner was expected to reach the destination as long as the vessel had already left the port of embarkation. If, due to rough seas or strong storms, the ship was compelled to anchor at a place other than the destination, and one of the passengers voluntarily unloaded his shipment, he had to pay the entire transport charges as if the consignment were unloaded at the destination.[75] If the ship anchored in a different port, the merchant "was not permitted to learn the value of his commodities at the local market [*fa-lā yanẓur ilā ghalā' al-matā' wa-lā ilā rukhṣihi*]." If he did so, the violator would be required to pay the entire fee.[76]

The impact of waves could be as disastrous as storms. The shipments that were stowed on the uppermost decks were usually exposed to the frequent spray of water which occasionally caused serious damage. If the ship, after having covered part of its journey, suffered wreckage and part of the cargo was lost or damaged, the lessee had to compensate the shipowner for the distance covered after the undamaged and damaged goods were appraised. The value of the damaged cargo was subtracted from the payment to the shipowner. And if the whole shipment was lost, the shipowner had no right to collect the fees.[77] When a vessel that sailed from Alexandria

[73] *Ibid.*, p. 29; Ibn 'Abd al-Barr, *Al-Kāfī*, vol. 2, p. 753.
[74] Wansharīsī, *Al-Mi'yār*, vol. 8, p. 310.
[75] *Ibid.*, p. 300.
[76] *Ibid.*, p. 308.
[77] *Ibid.*, pp. 300-301, 308; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 29; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 8, p. 498; vol. 9, pp. 147-148; Saḥnūn, *Al-Mudawwana*, vol. 4, pp. 496-497; Ibn 'Abd al-Barr, *Al-Kāfī*, vol. 2, p. 753; Rafī', *Mu'īn al-Ḥukkām*, vol. 2, p. 526; Ibn Ḥajar al-Haythamī, *Al-Fatāwā*, vol. 3, pp. 146-147.

to Tripoli on the Levantine coast was imperiled and part of the cargo was jettisoned, the lessees asked the shipowner to reimburse them part of the fares paid in advance. The letter's sender vividly describes the controversy saying: "Thank God, we arrived safely, but a great quantity of linen got wet, and the merchants quarreled with the owner of the boat until he remitted a part of the fare."[78] In contrast, there were cases where the shipowners declined to remit part of the transportation fees to the merchants even if the entire shipment was cast: "I could not refund the advanced payment from the shipowners since most of the bales were jettisoned just under the Pharos."[79]

Transportation fees decreased as the sailing season grew shorter. With the return of commercial vessels to the port of origin, shipowners lowered the freight rate in an attempt to attract more clients. Around 1060 C.E., Joseph b. Faraḥ al-Qābisī, a partner in business and the agent of Nahrāy b. Nissīm in Alexandria, reports about the fall of shipping charges resulting from the competition among the owners of vessels: "They [*i.e.*, the contractants] fixed the leasing amount for 5⅓ [*dīnār*s]. After fixing fees for 5⅓ [*dīnār*s], al-Dimashqī's vessel was leased for 4⅓ [*dīnār*s], and Mufarrij's vessel was rented for 3⅓ [*dīnār*s]."[80]

The duration of the voyage depended, of course, on the ship's structural and technical design and upon the speed of the winds. Even in particularly long trips, it was uncommon for the lessee to pay an extra fee for an "unexpected" increase of the shipment. This situation might arise when the shipment dealt with transportation of sheep, goats, cows, camels, or other domestic animals which could give birth during the voyage. This did not apply, however, in the case of human beings.[81]

Breach of Contract

Shipwreck, rough sea, bad weather, piracy and enemy raids, and the nullification of the agreement by one of the contractual parties were

[78] Goitein, *A Mediterranean Society*, vol. 1, p. 321, doc. TS 12.241, ll. 9-10.

[79] *Idem*, "Miṣhar ha-Yehudim," p. 380, doc. TS 10 J 19, f. 19, ll. 22-23.

[80] Ben-Sasson, *Yehudei Sitzilya*, pp. 568-574, doc. CUL OR. 1080 J 13, ll. 9-10.

[81] Wansharīsī, *Al-Miʿyār*, vol. 8, p. 64. Roman law provides that a shipowner was not entitled to collect a fee of carriage for a baby born on the voyage; see J. A. C. Thomas, "Juridical Aspects of Carriage by Sea and and Warehousing in Roman Law," *Recueils de la Société Jean Bodin pour l'Histoire Comparative des Institutions* 32 (1972), p. 127.

the most salient causes which could breach the ship-leasing contract. Encountering one of the above-mentioned elements did not mean that a lease had to be breached; however, the contractant had to include incontestable evidence supporting his claim if he wished to breach a contract.

A distinction was made between contracts of a specific ship and personal guarantee service. When a lease designated a particular vessel, its owner was not liable to provide the lessee with a substitute if it sank: "The hiring contract would be nullified with its wreckage [*yanfasikh ʿaqd al-kirāʾ bi-halāk al-safīna*]."[82] That is to say, the charterer was not entitled to demand a refund. Some scholars added an article to the previous statement stating that even if the ship wrecked, "the contract remained valid as long as the owner of the vessel repaired the damage."[83]

The poor physical condition of the vessel which did not permit safe passage was another reason to revoke the leasing contract. The contract could not be nullified unless arbitrators examined the vessel.[84] Otherwise, when the ship's mechanical apparatus functioned properly and provided the means for a safe passage, the lessee could not repeal the contract.[85] This rule only applied to a leasing contract which designated a particular ship. Conversely, if the type of *kirāʾ* was of the category of personal guarantee [*maḍmūn fī dhimmatihi*], the shipowner had to provide a substitute vessel if the original was out of commission.[86]

Man-made and natural hazards could threaten a commercial vessel either before it set sail or during the journey. Even if the vessel

[82] *Al-Fatāwā al-Hindiyya*, vol. 4, p. 459; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 16: "*wa-yufsakh al-kirāʾ bi-halāk al-safīna*"; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 81-82; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 281; Shammākhī, *Al-Īḍāḥ*, vol. 3, p. 575; Ibn ʿAbd al-Barr, *Al-Kāfī*, vol. 2, p. 753; Saḥnūn, *Al-Mudawwana*, vol. 4, pp. 496-497.

[83] *Al-Fatāwā al-Hindiyya*, vol. 4, p. 459: "*Illā idhā uʿīdat tarkībuhā min jadīd.*"

[84] Kindī, *Al-Muṣannaf*, vol. 21, pp. 153-154. An interesting explanation is given by al-Kindī who writes: "If the shipowner claims that his vessel is broken, he is required to ask two arbitrators who are well versed in maritime industries and who are able to verify and evaluate the damage of the vessel. If they discover that the damage would risk the shipments, the shipowner would be entitled to breach the contract while the lessee would have to remunerate him in proportion to what has been covered of the distance."

[85] Shammākhī, *Al-Īḍāḥ*, vol. 3, pp. 580-581; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 24.

[86] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 16; Shammākhī, *Al-Īḍāḥ*, vol. 3, p. 575; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 281; Ibn ʿAskar, *Ashal al-Madārik*, vol. 2, pp. 333-334; Ibn al-Barrāj, *Al-Muhadhdhab*, vol. 1, p. 483.

had already been loaded, it was prohibited from sailing when the sea was "closed," or when an enemy or pirate ship lurked in the vicinity. The parties to the contract had to wait for weather conditions to improve and for threats to disappear. The waiting period remained indefinite, lasting anywhere from a day to a few months. If the contractants did not breach their agreement before the sailing season came to an end, the contract remained valid for the next navigational season.[87] Since the delay could financially affect the contractants, classical jurists recommended the appraisal and distribution of losses between the lessee and lessor. The scholars' judgment was based on the Prophetic tradition "there shall be no harming of one party to another [*lā ḍarar wa-lā ḍarrār*]."[88] If the voyage was already underway, the nullification of the contract would only apply to the remainder of the distance. The lessee was obligated to indemnify the shipowner in proportion to the distance covered.[89]

The merchant could not breach the contract at the last moment, as the ship was about to set sail. If he did so, he would be obliged to pay the shipowner all freight charges.[90] The Khārijite jurist al-Kindī (d. 557/1162) was asked about a merchant who leased a vessel to convey his merchandise to a specific destination, but did not sail at that time (*i.e.*, during the sailing season): "Did he have to pay the freight charges? And what would happen if the shipowner refused to sail at that time claiming difficulties in crossing the sea?" He replied:

> If the merchant, without a compelling reason, refused to load the shipment, he has to pay the duties. If the delay in sailing resulted from the shipowner, after the convoy of vessels has headed back and the sea has

[87] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 299-300; Idris, "Commerce Maritime," p. 237; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 14-15, 20: "If the chartering parties signed the contract at a particular time, such as in the winter, when it is inappropriate to sail and stated that they would travel at that time without a previous condition to postpone the departure to a convenient time when the vessels are setting for sail, the contract must be nullified because sailing at that time is risky and the Prophet forbade taking risk: '*li-anna rukūbahum fi dhālik al-waqt taghrīr wa-qad nahā Rasūlu Allāh ʿan al-gharar.*'"

[88] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 14.

[89] *Ibid.*, p. 20; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 63-64; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 302; Rafiʿ, *Muʿīn al-Ḥukkām*, vol. 2, p. 526.

[90] Kindī, *Al-Muṣannaf*, vol. 21, pp. 154-155; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 82-83: "If the contract was signed for the transporting a specific shipment to a definite destination, and that shipment was stolen before or after being loaded, in both situations the merchant must pay all the freight charges"; Ibn ʿĀṣim, *Tuhfat Ibn ʿĀṣim*, pp. 580-581: "*Lorsque le preneur, pour un motif valable, revient sur son engagement, il est néanmoins obligé de payer le prix en totalité.*"

been closed, the merchant should be exempted from paying the transportation fee and be allowed to unload his shipment.[91]

While the Mālikī practice held that the merchant had to pay the entire fee, the Ḥanafīs stipulated a partial remuneration.[92]

Some jurists argued that damage to the freight was a sufficient reason to breach the contract. The partisans of this principle suggested nullifying the contract regardless of the quantity of the damaged cargo. Whereas a second attitude assumed that the contract remained valid, the third opinion compromised stating that "unless the damage resulted from 'an act of God' [*amr Allāh*], the leasing contract would be repudiated and the lessee had to pay the cost of the freight in proportion to the distance covered."[93]

Section II

Transportation of Goods

By the nature of a ship-leasing contract the lessor was required to hire professional manpower and provide a seaworthy vessel. The shipmaster and his crew had to deliver the cargo at the destined port so that, if non-delivery of or damage to part of the goods could be attributed to him or his sailors, he would, on accepted principles, be liable for the losses. In the absence of such fault, however, he would be absolved from responsibility.[94] The lessee, similarly, had to protect the commodities by using adequate packing materials and containers appropriate to the items carried in them.[95] Yet, to acquire a comprehensive understanding of the role of each party to the contract, it

[91] Kindī, *Al-Muṣannaf*, vol. 21, pp. 154-155.

[92] *Al-Fatāwā al-Hindiyya*, vol. 2, p. 317; Awzajandī, *Fatāwā Kāẓī-Khān*, vol. 2, p. 287: "A man charters a ship to bring a shipment back to the sailing port. What if when he reaches the port of embarkation he discovers that the shipment is not there? [He answers] 'The lessee must indemnify the shipowner an incomplete *kirā'* since the ship sailed empty when it headed to the port of embarkation.'" Notice that the partial remuneration that the lessee has to pay is only applied to the trip out from the original port. It is acceptable to assume that the lessee has to pay the whole freight on the return voyage as if the ship was transporting the consignment.

[93] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 82-83.

[94] Kindī, *Al-Muṣannaf*, vol. 21, p. 153; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 12, p. 295; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 44; Goitein, *A Mediterranean Society*, vol. 1, pp. 321, 337.

[95] Goitein, *A Mediterranean Society*, vol. 1, pp. 332-333.

is necessary to examine when the shipowner, crew, and merchant became responsible for the damage, and how the cargo had to be stowed in the hold, unloaded, and stored in the warehouses at the destination.

The merchant had to pack his goods properly in order to avoid damage during transport or by natural factors. Several techniques were employed to protect the consignments. The most common packing material was a strong canvas which was frequently used to wrap bales of flax and other costly commodities. Sacks of coarse drill [*tillis*] were used mainly for grain, while coarse haircloth served for the transport of wax. Oil, wine, other liquids, indigo, silk, and precious items were carried in skins and leather bags. Common articles such as copper, glass vessels, antimony, sal ammoniac, and books were carried in wickerwork crates and baskets. As the cargo was packed the name of the sender or the receiver, or both, was written in Arabic and Hebrew scripts (if the receiver was Jewish). Occasionally the name of the merchant accompanying the shipment would be indicated.[96]

Besides passing the physical inspection of the vessel the ship operators had to insure that the hull was impregnable. It had to be waterproofed with tar, fish glue, and oil before departure.[97] Once the technical procedures had been completed, the merchant was permitted to load the cargo after it had been weighed, appraised by the customs officials,[98] and registered by the ship's scribe.[99] At this stage the captain and crew had to place the cargo on board taking into consideration its bulk, weight, the stipulations of the ship-leasing contract, and destination. The heaviest items, such as metals, ballast, and bagged cargoes (salt, grain, and minerals), were stowed in the bottom part of the hold to lower the center of gravity of the ship and increase stability.[100] Nonetheless, a more concerned merchant would stipulate

[96] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, p. 375; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 305; Goitein, *A Mediterranean Society*, vol. 1, pp. 332-337.

[97] Nuwayrī, *Al-Ilmām*, vol. 2, p. 234; Chaudhuri, *Trade and Civilization*, p. 122.

[98] Makhzūmī, *Kharāj Miṣr*, pp. 20-22.

[99] Assaf, *Meqorot u-Meḥqarim*, p. 133, doc. TS 16.54, l. 31; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 37; Ibn al-Mujāwir, *Ṣifat Bilād al-Yaman*, vol. 1, 139.

[100] Nuwayrī, *Al-Ilmām*, vol. 2, p. 234; Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, p. 95; Ibn Bassām, *Nihāyat al-Rutba*, p. 157. The amount of cargo the ship could properly carry having been determined by the *muḥtasib*, a load line was marked on the side of the vessel. Frequent inspection was required to prevent vessels from taking on too much weight and submerging the markers to an illegal extent.

in the leasing contract that his cargo be stowed in the safest place regardless of its weight:

> I wrote to the agent of the ship ʿAlī Abū Dhahab and also to its captain that all you wished with regard to the transport of your goods, heavy baggage and other, should be carried out in accordance with your *instructions*; they should receive the goods from your brother and from the [...] and the friends and keep them and put them on the best place aboard.[101]

When a vessel sailed along the coastline and set anchor at intermediate ports, the cargo was placed so that it was accessible and easy to discharge. The shipment that would be unloaded first had to be within reach and arranged on the upper deck, while the cargo that would be unloaded at the final terminal had to be stowed in the hold. This disposition would avoid delays at the stopovers and damage to the freight especially if it contained foodstuffs and other perishable items.[102] If the failure to place the consignment appropriately resulted from carelessness on the part of both parties to the contract, they had to reach a compromise. The shipmaster could demur to the lessee's demand to unload his cargo at one of the early stopovers if the discharge would cause damage to other shipments aboard. The lessee had to appoint an agent to take care of the shipment, while the shipmaster, in return, had to sail back and unload it at the agreed destination.[103]

The most complicated altercations occurred among merchants who shipped their consignments and grain in a common hold aboard a specific vessel. If the cargo had been poured into a common hold, the consignors would become owners in common of the entire shipment. A consignor who intended to unload his quota had to consult his co-partners and the ship's captain and scribe. Once he discharged his portion the co-partners were unable to claim any part of his freight if they discovered damage in the cargo at the final terminal, or if they jettisoned part of the shipment overboard. The sole circumstance in which the consignors could retrieve a portion of the unloaded cargo was if that consignor had discharged more than his

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[101] Goitein, *Letters*, p. 81, TS 12.224; *idem*, "Miṣḥar ha-Yehudim," pp. 373, 378; *idem*, *A Mediterranean Society*, vol. 1, pp. 337-339; Ben-Sasson, *Yehudei Sitzilya*, pp. 194-199, TS 13 J 17, f. 3, ll. 6-7; *ibid*, pp. 229-233, TS 10 J 19, f. 19, l. 10.

[102] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 44; Kindī, *Al-Muṣannaf*, vol. 21, p. 153.

[103] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 44; Kindī, *Al-Muṣannaf*, vol. 21, p. 153; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 12, p. 295.

allocation.[104] Classical Roman lawyers had established an identical judgment.[105]

Similar to Byzantine maritime law,[106] a shipmaster was not obliged to unload the cargo unless the lessee so stipulated in the leasing contract, or if the local custom imposed such a provision: "If the shipowners' custom established that they unload the cargo, then they are bound to do so in completion of the leasing transaction."[107] Al-Wansharīsī's ruling suggests that the shipowner's responsibility for the cargo ended when the vessel anchored at the agreed-upon destination.[108] The task of the merchant or his agent was to unload the cargo and store it in the warehouse [*dār al-wakāla*]. When the merchant or his proxy did not accompany the shipment, the representative of the merchants [*wakīl al-tujjār*] had to take care of unloading, storing, and repackaging and transshipping of the cargo as well as paying any customs duties or the expenses. Thus, the function of the representative of the merchants was essentially to protect of the interests of persons who were absent from the town or were foreigners there.[109]

Normally the merchant had to discharge the cargo. Except in the case of a storm or when the goods were damaged, the merchant had to pay the freight charges to the shipowner if he was negligent or occupied himself with a marginal task, an act that could cause dam-

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[104] Rafi', *Mu'īn al-Ḥukkām*, vol. 2, p. 526; Ṭāher (ed.), *Kītāb Akriyat al-Sufun*, pp. 43-44; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 77-78.

[105] Thomas, "Carriage by Sea in Roman Law," pp. 144-145.

[106] Ashburner, *The Rhodian Sea-Law*, p. cxcvii: "The reciprocal obligations of the merchants and shipowner with respect to unloading varied with the provisions of the charter-party, and, in default of such provisions, with the custom of the port. The shipowner is under the obligation of delivering the cargo to the merchant and the merchant of taking delivery; but there was naturally no uniform practice as to where delivery was to be made."

[107] Wansharīsī, *Al-Mi'yār*, vol. 8, p. 301: "*idhā kān 'urf arbāb al-marākib tafrīgh al-riḥāl minhumā min al-baḥrayn fahuwa min tamām al-kirā'*."

[108] Maritime practices in the Islamic Mediterranean during the classical period differed from one region to another. Where the Andalusian custom required the owner of a large-sized vessel to provide a lighter vessel to transport the cargo and passengers to the shore, al-Makhzūmī reported that the Egyptian port authorities were responsible for conveying the cargo and passengers to the quay. See Ibn 'Abdūn, *Le Traité d'Ibn 'Abdūn*, p. 63; Makhzūmī, *Kharāj Miṣr*, p. 25; 'Abd al-Fattāḥ, *Al-Mawāni' wal-Thughūr*, p. 160.

[109] Goitein, *A Mediterranean Society*, vol. 1, pp. 186-192; *idem*, *Letters*, pp. 14-15; Udovitch, "Merchants and Amîrs," p. 65; *idem*, "Market and Society in the Medieval Islamic World," in *Mercati e Mercanti nell'alto Medioevo: l'Area Euroasiatica e l'Area Mediterranea* (Spoleto: Centro Italiano di Studi sull'alto Medioevo, 1993), pp. 782-783.

age to the shipment. In the event that the ship suffered wreckage and part of the goods was damaged during the unloading, the merchant whose shipment was saved had to pay the freight, while the unfortunate consignor was exempted from the shipping fee for the damaged goods.[110]

Thus, the purchaser (lessee) was primarily liable for his merchandise from the time of its being loaded at the port of embarkation until its storage in the warehouses at the destination.[111] Muslim jurists outlawed provisions made by the seller to ensure safe arrival of the shipment at the destination since he could not guarantee against travel hazards. Such types of insurance was not practiced for maritime journeys at all.[112]

Taxes and Tolls

Taxes fell under two theoretical categories: canonical taxes, which were expressly permitted by Islamic law, and non-canonical ones, which were dictated by the government. Under the former category, any merchant arriving in a Muslim port was required to pay a canonical tax, either a tenth [*ʿushr*][113] or a fifth [*khums*],[114] of his mer-

[110] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 27-28.

[111] Wansharīsī, *Al-Miʿyār*, vol. 6, p. 278.

[112] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 7, pp. 436-437; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 64: "*wa-law ishtarāhu wa-sharaṭa ʿalā annahu ḍāmin li-mā yuṣībahu fī ikhrājihi mina al-baḥr, la-kāna al-bayʿ fāsid li-annahu ishtarā bi-ʿaynihi ʿalā anna al-bāʾiʿ ḍāmin li-mā aṣābahu faṣāra mubtāʿan li-ḍamān.*"

[113] Nāṣīr-i Khosraw, *Book of Travels (Safarnāma)*, p. 13: "It [Tripoli, Lebanon] is also a customs station, as ships from Byzantium, Europe, Andalusia, and the Maghrib dock there. They pay ten percent to the *sulṭān*, which income provides for the soldiers' maintenance." Ibn al-Mujāwir, *Ṣifat Bilād al-Yaman*, vol. 1, p. 140. Paul Forand, "Notes on 'Ushr and Maks," *Arabica* 13 (1967), pp. 137; ʿAbd al-Jabbār Nājī, "Dirāsa Muqārana lil-Aḥwāl al-Tijāriyya li-Mawāniʾ al-Khalij al-ʿArabī wal-Jazīra al-ʿArabiyya fī al-Qarn al-Rābiʿ al-Hijrī," *Majallat Dirāsāt al-Khalīj wal-Jazīra al-ʿArabiyya* 14 (1988), p. 197; ʿAbd al-Fattāḥ, *Al-Mawāniʾ wal-Thughūr*, p. 122. *ʿUshr* (often translated as "tithe") is a tax that was to be levied on the following persons: (a) Muslim cultivators who owned *ʿushariyya* land irrigated by running water, brooks and streams, or by rain. They paid 10% of their produce, (b) Muslim merchants and artisans, who paid two and 1.5% of their annual earnings, (c) *Dhimmī* merchants and artisans, who contributed 5% of their annual earnings, (d) Enemy alien [*ḥarbī*] merchants, who paid 10% of the value of their merchandise when they entered the world of Islam [*dār al-Islām*].

[114] Ibn Mammātī, *Qawānīn al-Dawāwīn*, p. 326; Qalqashandī, *Ṣubḥ al-Aʿshā*, vol. 3, p. 463; Maqrīzī, *Al-Khiṭaṭ*, vol. 2, p. 122; Nājī, "Dirāsa Muqārana," pp. 186, 194; ʿAbd al-Fattāḥ, *Al-Mawāniʾ wal-Thughūr*, p. 123. This tax levied on incoming merchants at the frontiers [*thughūr*] required a *dhimmī* trader to pay ½₀ *dīnār* while a

chandise. Theoretically, the amount of taxes levied on the merchants differed according to their religious allegiance, citizenship, and political and social status. For example, the amount of customs paid by a Muslim was not equivalent to that levied on a *dhimmī*. Likewise, the dues imposed on a *dhimmī* trader was less than the amount levied on a *ḥarbī* merchant.[115] Tolls and taxes of a non-canonical nature were ubiquitous, although they varied over time and place. These included transit taxes levied along routes [*marāṣid*][116] and at gates [*qabāla*], and transaction taxes levied when goods were sold or transferred [*maghārim rusūm, itāwa, mukūs, adā', wājib*, etc.].[117]

Classical historical and travel literature proves that tax collectors and port officials in the Arabian and the Mediterranean Seas employed similar procedures in levying customs from the merchants. The desire of local governors to increase their tax income motivated them to monitor the merchants' activity closely by erecting customs stations along the river banks, trade routes, and ports.[118] Occasionally, as Ibn al-Mujāwir (601-691/1204-1291) states from 'Aden, governmental observers stationed in watchtowers on hills on the coast tracked the movement of commercial ships at sea. When a vessel was sighted offshore the watchmen transmitted the message by "loud voice" from one station to another until it reached the customs officials at the port. Afterward, as the vessel approached the port, the *wālī* sent officials aboard small crafts to meet it at sea and register all details regarding its port of origin, and the type, quantity, and purchase price of its shipments, as well as the name and citizenship of each passenger. It is reported that among the tax receivers were old women, who, as their male counterparts did to male passengers, thrust their hands into waistbands of female travelers in search of what might be hidden under their clothes. The cargo was taxed after it had been unloaded, unpacked, and weighed in front of the port

Muslim merchant paid ¼₀ *dīnār*. It was collected once a year even if the merchant had made several commercial trips to *dār al-Islām*.

[115] 'Abd al-Fattāḥ, *Al-Mawānī' wal-Thughūr*, p. 123.

[116] Muqaddasī, *Aḥsan al-Taqāsīm*, pp. 104-105.

[117] TS Box J 1, f. 54; Goitein, *A Mediterranean Society*, vol. 1, pp. 345-346; Olivia R. Constable, *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula 900-1500* (Cambridge: Cambridge University Press, 1994), p. 129.

[118] Muqaddasī, *Aḥsan al-Taqāsīm*, pp. 104-105; Nāṣīr-ī Khosraw, *Book of Travels (Safarnāma)*, p. 13; Ibn Jubayr, *Riḥlat Ibn Jubayr*, p. 38; Nājī, "Dirāsa Muqārana," pp. 183-184; Muḥammad Maḥmoud Abū Zayd, *Al-Nīl wa-Miṣr: Dirāsa li-Athar al-Nīl fī al-Ḥayāt al-Iqtiṣādiyya wal-Ijtimā'iyya fī Miṣr min al-Fatḥ al-Islāmī ḥattā Muntaṣaf al-Qarn al-Rābi' al-Hijrī* (Cairo: Dār al-Hidāya, 1987), p. 126.

officials, who were known as the clerical dignitaries [*al-mashā'ikh*, literally elders]. All these proceedings took place in the agency house of the representative of merchants [*dār al-wakāla*] of ʿAden which was established in Jumādā al-Ūlā 625/May 1227.[119] Al-Muqaddasī (336-380/947-990) asserts that the port authorities in ʿAden were always strict when collecting taxes and tolls from Muslim and non-Muslim traders. Only the shipwrights [*ghalāfiqa*] were tolerated by the tax collectors: "At ʿAden goods are appraised in the *Ẓakāwāt dīnār*s and one-tenth of the value is exacted in *ʿAththārī dīnār*s. It is estimated that the royal treasury receives about one-third of the goods of merchants. The search here is very strict."[120] Tax collectors at the port of Ṣuḥār (Omān) practiced a similar method.[121]

Arriving at the Alexandrian port in the month of Dhū al-Ḥijja 579/March 28-April 25, 1183, Ibn Jubayr reports:

> The day of our landing, one of the first things we saw was the boarding of the agents of the *sulṭān* [*umanā'*] to record all that had been brought in the ship. All the Muslims in it were brought forward one by one, and their names and descriptions, together with the names of their countries, recorded. Each was questioned as to what merchandise or money he had, that he might pay *zakāt*, without any inquiry as to what portion of it had been in their possession for a complete year and what he had not. Most of them were on their way to discharge a religious duty and had nothing but the [bare] provisions for the journey. But they were compelled to pay the *zakāt* without being questioned as to what had been possessed by them for the complete year and what had not. Aḥmad Ibn al-Ḥassan of our members was called down to be questioned as to the news of the Maghrib and as to the ship's cargo. Under watch he was in turn conducted first to the *sulṭān*, then to the *qāḍī*, then to the officials of the customs, and then to the group of the *sulṭān*'s suite, and after being questioned concerning everything, and his statements recorded, he was released. The Muslims were then ordered to take their belongings, and what remained of their provisions, to the shore, where there were attendants responsible for them and for carrying to the customs all that they had brought ashore. There they were called one by one, and the possessions of each were produced. The customs was packed to choking. All their goods, great and small, were searched and confusedly thrown together, while hands were thrust into their waistbands in search of what might be within. The owners were then put to

[119] Ibn al-Mujāwir, *Ṣifat Bilād al-Yaman*, vol. 1, pp. 138-143; Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa*, vol. 2, pp. 181-183, reports a similar practice in the port of Mogadishu off the Arabian Sea.

[120] Muqaddasī, *Aḥsan al-Taqāsīm*, pp. 104-105.

[121] Rustāqī, *Manhaj al-Ṭālibīn*, vol. 5, pp. 65-66.

> oath whether they had anything else not discovered. During all this, because of the confusion of hands and the excessive throng, many possessions disappeared. After this scene of abasement and shame, for which we pray God to recompense us amply, they [the pilgrims] were allowed to go.[122]

Many Muslim chronicles complained of the inhumane behavior of the customs officials toward the arriving or transient merchants and passengers at Islamic ports.[123] This harsh policy of collecting taxes affected Muslim and *dhimmī* merchants alike. While the *dhimmī* was required to present a written pledge proving the payment of the poll tax [*jizya*], his Muslim counterpart had to vouch for the payment of almsgiving [*zakāt*]. However, the major concern of the central and local authorities was to increase the governmental revenue from taxes by all means.

Al-Makhzūmī (d. 585/1189) provides extensive details on commercial taxes in the Egyptian ports of Alexandria, Damietta, Tinnīs, and Rosetta along the Mediterranean Sea, as well as the ports of Qulzum and ʿAydhāb on the Red Sea.[124] When a *Rūmī* (Byzantine or Italian) commercial ship arrived in port the secretary registered details concerning the port of origin, type and quantity of the cargo on board, and passengers' names and nationalities in order to estimate the customs. Similarly, when a Muslim vessel anchored in the terminal the scribe had to record the arrival date, the names of the passengers, shipowners, and vessels, and the quantity, quality, and purchase price of the shipments before storing them in the warehouses. Furthermore, neither the shipmaster nor the merchant could unload the cargo without an official permit.[125]

In addition to the Islamic canonical taxes, toll station fees, and entry and exit permits, which were not refundable,[126] the arriving and departing merchant had to pay gratuities to government officials

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[122] Ibn Jubayr, *Riḥlat Ibn Jubayr*, p. 13.

[123] Abī ʿAbd Allāh Muḥammad Ibn Muḥammad Al-ʿAbdarī, *Riḥlat al-ʿAbdarī* (Rabāṭ, 1968), p. 93. In a similar description of the harsh treatment of Muslim pilgrims in the port of Alexandria, al-ʿAbdarī states that Muslim pilgrims were humiliated before continuing their trip to Makkah and that the women aboard were also subject to search.

[124] Cahen, "Douanes et Commerce dans les Ports Méditerranéens," pp. 221-222.

[125] TS 16.215v, ll. 4-5; Makhzūmī, *Kharāj Miṣr*, pp. 46-49, 57-58. For a French translation of the texts, see Cahen, "Douanes et Commerce dans les Ports Méditerranéens," pp. 299-300, 311-314.

[126] TS 10 J 16, f. 15, ll. 9-10 (*India Book*, doc. no. 222); Barrāwī, *Ḥālat Miṣr al-Iqtiṣādiyya*, pp. 250-251.

and laborers in the port. This gratuity included tips to the weigher, messenger of the customs house, revenue officers (registrar), packers, inspectors of the workshops, warehouseman, mosque janitor, porters transporting cargo from oversized vessel to the storehouses, watchmen of the cargo and warehouse, sealer, and herald.[127] Practically, no distinction was made between local and foreign traders. Once they fulfilled their obligations they were granted a written certificate called a *barā'a* as a proof of payment of the dues.[128] Otherwise, a merchant who did not have enough money to pay for the customs had to leave behind him a part of his goods as security for later payment: "And he left behind him the big parcel of kohl in the customhouse as a deposit for the unpaid customs fee [*wa-qad taraka qiṭ'at koḥl al-kabīra fī al-khūr 'alā baqiyyat al-maks*]."[129]

In an attempt to explore the patterns of vessel leasing during the classical Islamic period, we have analyzed jurisprudential inquiries and corresponding Cairo Geniza documents that describe the legal and practical procedures that charter-parties had to follow when concluding a hiring contract. To avoid altercations, the jurists advised the lessee and lessor to sign a leasing contract outlining the payment arrangements, specifying the type of hiring, and defining the rights and duties of each party. Nevertheless, the discussion has proved that the conditions of a ship-leasing contract could be disregarded when exceptional "natural factors beyond human control," and man-made obstacles intervened. Under these circumstances the parties to the contract had to make concessions and distribute among themselves the liability and responsibility. In some situations, the consignors were required to pay the full freight even if they did not reach the agreed upon destination; occasionally, they were absolved from paying the fees. And in many cases, in particular when the vessel sailed along the coastline, they had to pay the shipowner in proportion to the distance covered.

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[127] Makhzūmī, *Kharāj Miṣr*, pp. 9-10; Cahen, "Douanes et Commerce dans les Ports Méditerranéens," p. 283; Goitein, *Letters*, pp. 284-286; 'Abd al-Fattāḥ, *Al-Mawāni' wal-Thughūr*, p. 124; Barrāwī, *Ḥālat Miṣr al-Iqtiṣādiyya*, pp. 269-270, 344-346; Wansbrough, "Venice and Florence in the Mamluk Commercial Privileges," p. 520: "And when the galleys arrive at the harbor of Beirut there is a gratuity of 30 *florins* on each galley for the superintendent."

[128] Forand, "Notes on 'Ushr and Maks," p. 137.

[129] TS 12.434, ll. 14-15. In verso ll. 10-12, the sender complains that the merchandise of other merchants was released but not his own since he could not pay the dues. The letter dates to the early twelfth century C.E.

A thorough examination of ship-leasing transactions suggests that damage to the cargo during the voyage could be laid upon one or both parties to the contract. Typically, the consignor was required to wrap the consignments in proper packing materials before they were delivered to the ship operators, who in turn had to place them on board and cover the commodities against the spray of seawater and the elements. Negligence on the part of the ship operator required him to indemnify the consignor for the damage. Finally, the ship-master had to transport the cargo safely to the destination where the merchant, his agent, or the representative of the merchants would unload and store the goods in the warehouse if required to do so by the custom of the shipowners.

Goods were appraised by the customs officials at the port of origin and the destination. In addition to the Islamic canonical taxes and tolls, the cargo owner customarily had to pay a gratuity to the government officials, porters, and other concerned parties at the port of origin and the disembarkation point.

Section III

The Laws of Jettison and General Average

Islamic jurists grappled with the issue of when it was allowable to throw cargo overboard in an emergency. Storms, piracy, and enemy attacks could all necessitate the jettisoning of cargo. In stormy weather, the sea might become unduly rough—and the crew might throw cargo overboard so as to make the ship easier to control. A sinking ship, too, might be salvaged by jettisoning cargo, thereby making the ship lighter and more maneuverable.[130] In regions where piracy was prevalent, getting rid of valuable cargo might make the ship a less tempting target for thieves. In war zones, a ship without cargo also represented a poor target, inasmuch as it would not provide the enemy with spoils of war. And in both cases, a lighter and more maneuverable ship stood a better chance of escaping from its adversaries than did a heavily laden vessel.

The following discussion examines the various solutions proposed by Muslim jurists to the problems arising from jettison. Our analysis

[130] Abū ʿAbd Allāh Muḥammad Ibn Muḥammad Ibn ʿAbd Allāh al-Idrīsī, *Nuzhat al-Mushtāq fī Ikhtirāq al-Āfāq* (Port Saʿīd, 1990), vol. 1, pp. 94-95.

will focus on three basic points: the rules of jettison, the distribution of losses, and the type of jetsam (jettisoned cargo) included within the category of *general average.* Put differently, how was the decision reached to jettison all or part of the cargo, and who did the actual throwing? How were calculations made to assess losses and compensation, and which goods were taken into account? And, who—among passengers, owners of goods, and crew—was required to pay compensation?

The Rules of Jettison

Since the dawn of maritime civilization, jettisoning all or part of the ship's cargo was one of the most common methods of saving a ship caught in storm.[131] Such actions usually has caused sea travelers and merchants financial and even human losses. In the Islamic tradition, it was lawful to jettison any goods if doing so could save a ship in imminent peril of foundering. A detailed letter of Isaac Nīsābūrī[132] to ʿUlla Dimashqī,[133] around 1120 C.E., deals at length with the loss of three ships and other matters. Of a convoy of five ships, three carrying a load valued at about 200,000 *dīnārs* were lost. In the ship carrying the writer's goods were ten Jews, prominent in their home town of Tripoli, who, in addition to merchandise worth 7,000 *dīnārs*, lost through jettison all their money, belongings, and even clothing.[134]

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[131] See, for instance, the *Book of Jonah* 1:5. In his mission to Nineveh, the capital of Assyria, the prophet Jonah recounts how his ship was caught in strong storms and rough seas which forced the sailors to cast personal effects and cargo overboard to lighten the vessel: "But the Lord let loose a hurricane, and the sea ran so high in the storm that the ship threatened to break up. The sailors were afraid, and each cried out to his god for help. Then they threw things overboard to lighten the ship." This text was compiled no later than 600 B.C.E.

[132] Issac Nīsābūrī was a Persian resident in Alexandria, dealt in the following commodities: dyeing plants, medical and culinary herbs, glass, silk, textiles, corals, perfumes, wax, millstones, and variety of household goods. Goitein, *A Mediterranean Society*, vol. 1, p. 153.

[133] ʿUlla ha-Levi b. Joseph al-Dimashqī, whose documents from the Geniza date from 1084-1117 C.E., was assistant member and trustee of the rabbinical court in Cairo. ʿUlla was active in the Mediterranean as well as in the India trade and handled a wide variety of merchandise as shown in his correspondance. He dealt chiefly in silk, corals, glass, brocades and other robes, and such Western goods as saffron, ambergris, and scammony, and Oriental products, in particular brazilwood. In addition to his manifold duties as *parnās*, he was also a trustee of the yeshiva of Jerusalem. Goitein, *A Mediterranean Society*, vol. 2, p. 78.

[134] DK XI, ll. 3-12, 21-26.

The Geniza records contain voluminous accounts referring to maritime disasters.[135] The foundering of a large ship on its way from Sicily to Alexandria with four hundred passengers on board is described at great length in a Hebrew letter. After a storm, which lasted three days, the ship began to draw water and the sea burst into it from all sides. All efforts to keep it afloat by pumping and throwing part of the cargo overboard were of no avail. In the end, the passengers entreated the captain to turn toward the mainland.[136]

From a legal point of view, three parties were involved in the decision to throw cargo overboard: the captain, the crew, and the merchants or their agents. However, these three parties consulted one another, and unless they reached a consensus, one party had no right, in case of jettison, to claim remuneration from another. When an agreement was reached, the captain would order the cargo to be jettisoned overboard in the amount necessary to alleviate the danger to the vessel.[137]

Jettisons were of two types. Under some scenarios, the crew would have time to consult cargo owners prior to jettisoning the cargo. All parties involved could negotiate terms of compensation and determine precisely how much cargo needed to be abandoned. Under other scenarios, however, an emergency might force the immediate jettison of cargo—and the crew would not enjoy the luxury of time to negotiate with the cargo owners aboard their vessel. In this case, the ship's commander held the authority to throw cargo overboard for the sake of the ship's safety; he did not have to obtain the consent of

[135] Goitein, *A Mediterranean Society*, vol. 1, pp. 320-321; Gil, *Eretz Yisrael*, vol. 3, pp. 267-271, doc. TS 8 J 19, f. 27, ll. 3-8: "We set sail [in Tyre] for Jaffa, the port of Ramle. However, a wind arose against us from the land. It became a storm and drove us out into the midst of the sea, where we remained for four days, giving up all hope for life. We were without sails and oars and the rudder was broken. Likewise, the sailyards were broken and the waves burst into the *qārib*. Realizing that our ship was a mere riverboat [*ʿushārī*], small as a ferry, we cried: 'Allāh Allāh.' We threw part of the cargo overboard ... ." TS 12.386v., ll. 5-6: "And how about my master Abū al-Faḍl Ibn Faraḥ who jettisoned all that he had with him [*wa-ʿan sayyidī Abū al-Faḍl Ibn Faraḥ wa-in kāna ramā min jamīʿ mā kāna maʿhu*]?"

[136] Assaf, *Miqorot u-Mehqarim*, pp. 130-137, docs. TS 16.54, ll. 26-33, and TS 12.114, ll. 18-27; Ben-Sasson, *Yehudei Sitzilya*, pp. 192-194, doc. TS 10 J 11, f. 17, ll. 11-14; pp. 229-233, TS 10 J 19, f. 19, ll. 7-11.

[137] Idris, "Commerce Maritime," p. 239. Al-Lakhmī states that when a sinking vessel has to jettison cargo, and if the freight is composed exclusively of equivalent loads [*riḥāl*], one will proceed by drawing of lots without making any discrimination between their owners: men, women, slaves [*ʿabīd*], and *dhimmī*s.

the owners.[138] If the owners of the cargo—or their proxies—were on board the ship, the captain could even order them to dispose of their own goods.[139]

The owners of the cargo were solely liable for the losses if they threw their merchandise overboard without consulting the ship's captain, crew, and passengers. If one person threw another man's goods into the sea, the former would become liable for the losses.[140] By contrast, if *A* called upon *B* to sacrifice voluntarily *B*'s cargo, *B* had no legal right to be reimbursed since *A* did not promise to pay him for the loss.[141] *A* was required to indemnify *B* if *A* called upon *B* to jettison cargo and agreed to pay him for the loss.[142] *A* was also obliged to guarantee *B*'s losses if the latter made a sacrifice for the benefit of *A*.[143] If *A* called upon *B* to jettison *C*'s cargo, and *A* guaranteed *B* to indemnify *C* if the latter sought remuneration for the losses, "the liability would be laid upon the thrower rather than the one who gave the order [*fal-ḍamān ʿalā al-mulqī dūn al-āmir*]."[144] If *A* called upon *B* to jettison his merchandise, and the former guaranteed to remunerate him a half of the forfeiture, while the second half was to be paid by the passengers, then *B* would only be entitled to receive

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[138] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 237: "The shipowner is entitled to demand the merchants to throw their cargo overboard to lighten the ship [*min ḥaqq ṣāḥib al-markab an yaqūl lahum {al-tujjār}: iṭraḥū matāʿkum li-yakhiffa markabī*]."

[139] Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 337; Bayḍāwī, *Al-Ghāya al-Quṣwā*, vol. 1, p. 901; Kindī, *Al-Muṣannaf*, vol. 18, p. 60: "In case the shipowner is afraid of shipwreck, he is entitled to jettison the commercial commodities of the merchants even if they are unwilling, and I favor throwing cargo overboard when it appears necessary. It is also said that he is entitled to jettison the entire cargo, or any one owners cargo [*inna li-ṣāḥib al-markab idhā khāfa al-gharaq an yaṭraḥ amtiʿat al-nās wa-law kariha aṣḥāb al-matāʿ, qāla: wa-yuʿjibanī an yakūn dhālik baʿda al-ḥujja ʿalayhim, qīla lahu fa-yaṭraḥ matāʿhum jamīʿan aw matāʿ man arād*]."

[140] Muwaffaq al-Dīn Abū Muḥammad ʿAbd Allāh Ibn Aḥmad Ibn Muḥammad Ibn Qudāma, *Al-Mughnī* (Cairo: Dār Hajar lil-Ṭibāʿa wal-Nashr, 1986), vol. 12, p. 550; Shāfiʿī, *Al-Umm*, vol. 6, p. 86; Qarāfī, *Al-Furūq*, vol. 4, p. 11; Kindī, *Al-Muṣannaf*, vol. 18, p. 59; Sughdī, *Al-Nutaf*, vol. 2, pp. 791-792; Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 191; Shammākhī, *Al-Īḍāḥ*, vol 3, p. 610.

[141] Ibn Qudāma, *Al-Mughnī*, vol. 12, p. 550; Kindī, *Al-Muṣannaf*, vol. 18, p. 59; Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 192.

[142] Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 191; Muḥammad Ibn Muḥammad al-Ghazzālī, *Kitāb al-Wajīz fī Fiqh al-Imām al-Shāfiʿī* (Cairo: Maṭbaʿat al-Ādāb, 1317/1899), vol. 2, p. 152; Ibn Qudāma, *Al-Mughnī*, vol. 12, p. 550; Bayḍāwī, *Al-Ghāya al-Quṣwā*, vol. 1, p. 901.

[143] Ibn Qudāma, *Al-Mughnī*, vol. 12, p. 550; Sughdī, *Al-Nutaf*, vol. 2, p. 792: "*wa-in qāla: Ulqī matāʿī wa-taḍmanahu lī? fa-qāla: naʿam; fa-alqāhu, ḍaminahu lahu.*"

[144] Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 194.

one half unless the passengers had already guaranteed to pay him the second half.[145] If *A* said to *B*: "Jettison your merchandise and the passengers and I guarantee to remunerate you," but then the passengers denied *A*'s authorization to speak on their behalf, *A* would be solely responsible for the entire loss. There were those among the *fuqahā'* who ruled that the authorization should be regarded as invalid unless the majority of passengers on board ship selected him to speak on their behalf: "*wa-sukūtahum laysa bi-ḍamān.*"[146]

Whether to jettison the heaviest goods or those nearest at hand was another disputed matter. The heaviest goods, if they were reachable, had to be thrown overboard first, regardless of their value.[147] If someone threw accessible lighter goods overboard although the heaviest were accessible to the same degree, he would be solely responsible for the loss.[148] This requirement raises the question of how the goods were disposed on the ship? Here one must take into consideration the type of voyage and whether the ship was traveling along the coast, or on the high seas. In the case of coastal navigation, the goods had to be arranged in accordance with their destination. Goods to be unloaded first had to be accessible. This rule was most likely applicable to cases involving ships that made frequent stopovers.[149] Conversely, sailing across the open sea required the captain and crew to place the heaviest goods in the bottom since they could be used as a substitute for ballast.[150]

An early eleventh-century document from the archive of Joseph Ibn ʿAwkal contains invaluable details that confirm this hypothesis. The sender, Ephraim Ibn Ismāʿīl al-Jawharī, an agent of Ibn ʿAwkal who managed his business with the Maghrib, describes how two ships heading for Sicily were forced to jettison one hundred bales of cargo in the vicinity of the Pharos:

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[145] Ibn Qudāma, *Al-Mughnī*, vol. 12, p. 551; Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 194; *Al-Fatāwā al-Hindiyya*, vol. 3, p. 292; Awzajandī, *Fatāwā Kāzī-Khān*, vol. 3, p. 52.

[146] Shāfiʿī, *Al-Umm*, vol. 6, p. 86; Ghazzālī, *Al-Wajīz*, vol. 2, p. 152; Ibn Qudāma, *Al-Mughnī*, vol. 12, pp. 550-551; Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 193.

[147] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 298-299, 312; Ibn Rushd, *Fatāwā*, vol. 2, pp. 1191-1193; Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 238; Nuwayrī, *Al-Ilmām*, vol. 2, p. 243.

[148] Ibn Ḥazm, *Al-Muḥallā*, vol. 7, p. 27: "*wa-ammā man ramā al-akhaff wa-huwa qādir ʿalā ramyi al-athqal, fa-huwa ḍāmin min dhālik lā yaḍmanahu maʿhu ghayrihi.*"

[149] Kindī, *Al-Muṣannaf*, vol. 21, p. 153; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 12, p. 295; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 44.

[150] Ashburner, *The Rhodian Sea-Law*, pp. clvi-clvii; Nuwayrī, *Al-Ilmām*, vol. 2, p. 234.

> I have already informed you that I loaded all the bales destined for Palermo and al-Mahdiyya after an arduous effort (...) and that the ships bound for Sicily jettisoned approximately one hundred bales. Sixteen of them, which belong to my master—*God prolong his esteem*—eight bales were in Daysour's ship, and another eight bales were in the ship of Prince ʿAlī. Even the ships heading for al-Mahdiyya jettisoned cargo into the sea, but nothing of yours was thrown since all your bales were in the hull, none on deck. By God, my master, when I recovered the sixteen bales which were thrown overboard the Sicilian ships, I suffered harder than if I were to load a hundred bales, since the ships were fully loaded and whoever I asked to transport them turned me down. Therefore, ten of yours were among the thirty bales shipped to al-Mahdiyya aboard the new ship of Ḥussayn al-Lakkī, and the remaining six bales were transported in the ship of Yaḥyā al-Sāḥilī al-Sfāxī.[151]

This document substantiates our assumption that vessels that crossed the open sea carried the heaviest cargo in the hull rather than on deck [*fī buṭūn al-marākib laysa ʿalā ẓuhūrihā*], and that in time of crisis accessible cargo had to be thrown first without regard to its bulk.[152]

If the cargo owners or their proxies were not traveling on board the ship, the captain could legally act as owner of the cargo. That is, under adverse circumstances, he could jettison the cargo unilaterally, after consulting his crew. However, later on the captain would be held accountable for his actions; magistrates would ask him to justify his decisions at sea.[153] Legally, the captain and crew could protect themselves by taking an oath that a *bona fide* emergency required the jettisoning of cargo. When the jettisoned cargo was not of substantial commercial value, the crew did not have to present any evidence to accompany the oath; the oath alone was sufficient.[154]

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[151] Goitein, "Miṣḥar ha-Yehudim," pp. 378-379, doc. TS 10 J 19, f. 19, ll. 6-15. This document was also published by Ben-Sasson, *Yehudei Sitzilya*, pp. 229-233.

[152] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 43; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 309.

[153] Kindī, *Al-Muṣannaf*, vol. 18, pp. 59-60: "If the shipowner was afraid of ship wreck and threw cargo overboard without consulting the owners, the liability for the losses would be laid upon himself since he was paid to reach the destination. ... Similarly, the captain is also liable for the losses if he throws cargo overboard without consultation with the owners [*idhā khāf al-nākhūdhā ʿalā al-markab al-talaf fa-ṭaraḥa al-matāʿ bi-raʾyihi ... fa-inna al-ḍamān ʿalayhi khāṣṣatan li-annahu ḥamalahum bil-kirāʾ ... wa-ammā idhā ṭaraḥahu al-rubbān bi-raʾyihi fa-dhālik ʿalayhi wa-lā ḍamān ʿalā al-rukkāb*]." Winstedt & de Josselin, "The Maritime Laws of Malacca," p. 54: "Before throwing cargo overboard in a storm, the crew has to be consulted, if they also had a share in the cargo. In that case the part of each crew-member's share in the cargo that was to be thrown overboard was to be proportionate to the size of that share. This was the captain's responsibility." Raffles, "The Maritime Code of the Malays," p. 72.

[154] Wansharīsī, *Al-Miʿyār*, vol. 8, p. 299. Such practice prevailed in the Latin world. In the event that the owners of cargo were not on board, the decision was

Occasionally, however, a given part of the cargo might be especially valuable—particularly if the cargo consisted of foodstuffs. In these cases, magistrates insisted upon more complex legal proceedings demanding a higher standard of proof that the jettison was indeed necessary [*wa-ammā al-ṭaʿām fa-lā yuṣaddaq illā bi-bayyina*].[155] The captain and crew had to present indisputable evidence [*bayyina*] that the act of jettison was unavoidable. This evidence might take any one of three forms: oral depositions, well-founded hearsay, or physical examination of a battered ship's hull.

First, the captain, crew, and passengers could give an oral deposition that the act of jettison was justifiable and unavoidable—in other words, that no realistic alternative course of action was available. Second, hearsay could be admitted into evidence if they came from a particularly credible source. For example, if the ship in question was traveling in a convoy, sailors and passengers from other ships in that convoy could corroborate the captain's testimony.[156] Third, *ahl al-ʿudūl* (literally meaning "witnesses of good reputation" or "the just") could undertake a physical examination of the ship's hull.[157] Through such an examination, the magistrate could assess whether the physical evidence was compatible with the captain's account of the emergency.[158] If the magistrate determined that the captain's decision to jettison was unjustified, he could order the captain to reimburse the cargo owner in full.[159]

Arguments about the volume and description of the jettisoned cargo usually occurred between the shipowner and the merchants. As

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generally left to the captain and crew, with some texts requiring that their agreement be recorded by the ship's scribe or—in his absence—witnessed by the crew under oath. See Olivia Remie Constable, "The Problem of Jettison in Medieval Mediterranean Maritime Law," *Journal of Medieval History* 20 (1994), pp. 215-216.

[155] Rafiʿ, *Muʿīn al-Ḥukkām*, vol. 2, p. 528; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 309.

[156] Ben-Sasson, *Yehudei Sitzilya*, pp. 226-229, doc. TS 13 J 17, f. 11, l. 25: "They have seen the vessels that were wrecked at sea 15 days ago [*wa-an laqū al-marākib al-munkasira fī al-baḥr min 15 yawm*]."

[157] Kindī, *Al-Muṣannaf*, vol. 21, pp. 153-154: "The judge is required to assign two witnesses of good reputation who are acquainted with ship building and ships' deficiencies [*fa-liya'mur al-ḥākim ʿadlayn min ahli al-maʿrifa bi-dhālik al-ʿamali wa-ʿuyūb al-qawārib*]"; Ibn Bassām, *Nihāyat al-Rutba*, pp. 148, 157.

[158] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 309-310; Ṭūsī, *Al-Nihāya*, pp. 447-449; Ibn Nujaym, *Al-Baḥr*, vol. 8, pp. 31-33; Ḥillī, *Al-Sarāʾir*, vol. 2, p. 470; Muḥaqqiq al-Thānī, *Jāmiʿ al-Maqāṣid fī Sharḥ al-Qawāʿid* (Beirut: Muʾassasat Āl al-Bayt, 1991), vol. 7, p. 298; *Al-Fatāwā al-Hindiyya*, vol. 2, p. 335, vol. 4, 503.

[159] Ibn Bassām, *Nihāyat al-Rutba*, pp. 148, 157; Ḥasanayn, *Al-Ḥisba fī al-Islām*, p. 37.

a rule, every commercial ship had a scribe who kept the records of the ship's cargo.[160] These accounts contained the volume and description of cargo and were written in a cargo book known in the Mediterranean Sea as *al-shāmil*,[161] and in the Indian Ocean as *al-ruqʿa*.[162] Muḥammad Ibn ʿUmar, in his treatise on the law of the sea, wrote: "Regarding the articles of the shipment, they have to be registered in the cargo book [*shāmil*]. It came to be an auxiliary document which helps the passengers to identify their cargo."[163]

When an arbitrator dealt with disputes between the shipowner and merchants, he had to consider the cargo book as the most reliable document to settle these arguments. If a merchant proved that the shipowner did not register some of the articles that were lost at sea, the latter was obligated to indemnify the former. On the other hand, the shipowner was released from responsibility if some passengers testified and refuted the merchant's claim.[164] A second legal procedure was established to summon the seller from the port of origin to testify as to the volume and quality of the cargo.[165] These legal procedures were also applied to incidents in which a merchant claimed that part of the merchandise was sold or lost *en route*.[166]

Of equal importance to the *shāmil* was the *daftar*, or booklet, a private record used by the merchants of the classical Geniza and their representatives, in which the senders and receivers of cargo registered their business transactions.[167] The *daftar* contained reports of partners or customers about shipments received, sales and purchases made, goods or cash or both shipped, and balances outstanding.[168] The basic form of this booklet could be called a "season report," covering the period from the arrival of the convoys of ships

[160] Abū al-Faḍl al-ʿĀllāmī, *ʿĀ-ini Akbarī*, vol. 1, p. 290; Ibn al-Mujāwir, *Ṣifat Bilād al-Yaman*, vol. 1, pp. 138-139.

[161] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 37.

[162] Ibn al-Mujāwir, *Ṣifat Bilād al-Yaman*, p. 139.

[163] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 37.

[164] *Ibid.*, pp. 34-36.

[165] Wansharīsī, *Al-Miʿyār*, vol. 8, p. 299.

[166] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 39.

[167] Goitein, "Mishar ha-Yehudim," p. 387, doc. TS 13 J 17, f. 11, l. 10; *idem*, *A Mediterranean Society*, vol. 1, pp. 205-206. The popular format of such a *daftar* was narrow, only 3 to 4 inches wide. Their length varied between a short type (5½ to 6 inches), and a longer one (7½ to 11 inches). The reason for this narrow format was the custom of carrying one's account in one's sleeve in order to have it ready for reference, if needed.

[168] Bodl. MS Heb. a 3 (Cat. 2873), f. 13, ll. 44-46.

in the spring to their sailing in the fall.[169] Interestingly, when disputes arose between partners, merchants, or their proxies, the parties involved were required to present the original *daftar* to the judge, either *dayyān* or *qāḍī*, because such admission in court was considered as circumstantial evidence, if not formal proof.[170] Accordingly, it stands to reason that the *daftar* might also have been employed to settle arguments concerning the quantity, quality, and type of cargo jettisoned at sea, and its actual price at the port of origin.

Judges would refer to a leasing contract to determine precisely the type and volume of the jetsam. A leasing contract occasionally contained articles defining the quality and quantity of the shipment transported aboard a specific vessel. Such a stipulation is documented in al-Minhājī's masterpiece *Jawāhir al-ʿUqūd* which ruled: "If the contract stipulated to dispatch a specific consignment to a definite destination and the freight was paid in advance, the lessee and the lessor should commence the contract stating: 'so-and-so has contracted so-and-so to transport such-and-such cargo on so-and-so's ship.'"[171] Thus, when the volume and articles of the shipment were recorded prior to the departure, it became easier to calculate the amount of cargo jettisoned overboard.

Letters of speedy transmission (what we would call an express letter today), which usually reached the cargo recipient before the ship's arrival at the port of debarkation, might be counted as being of great legal significance. A typical express letter ordinarily contained a list of

[169] Goitein, *A Mediterranean Society*, vol. 1, p. 207.

[170] TS 10 J 29, f. 5, ll. 16-19. The document deals with a claim that was brought before *bēth dīn* [law court] against the representative of merchants in Ramle. In front of the judge, it was agreed between the claimant and the defendant, that the latter should go down to that city to verify the facts from his *daftar* [*wa-ittafaqnā ʿalā annahu yanzil al-Ramla yakshif daftarahu ... wa-naḥḍur fī majlis av bēth dīn*]. See also Ben-Sasson, *Yehudei Sitzilya*, pp. 226-229, doc. TS 13 J 17, f. 11, ll. 8-14. This letter proves that Muslim *qāḍī*s also considered the *daftar* as a substantial piece of evidence. In a complaint that was summoned to the *qāḍī* of Qayrawān, ʿAbd al-Raḥmān b. Muḥammad b. ʿAbd Allāh b. Hāshim (in office between 1006 and 1036 C.E.), he required the commenda dealer [*al-maqrūḍ*] to present the *daftar* to the court. In order to substantiate all commercial transactions and details registered there, the *qāḍī* sent inspectors to the port to assess the quality and quantity of the cargo in the shiphold [*ẓahara ʿalayhi {markab} al-raḥl wa-rufiʿa lil-Qayrawān li-ʿAbd b. Hāshim al-Qāḍī*]. This short account leaves no doubt that the *daftar* may have been used by the classical Geniza merchants when they calculated the value of jetsam.

[171] Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, p. 294. It stands to reason that each party of the charter maintained a copy of the leasing contract, and that the *qāḍī* would require the lessee and the lessor to present the original to the court.

ships that were expected to arrive, a list of merchants on board each ship and a catalogue of all cargoes and their contents and their recipients, and other merchandise that was expected but had not yet arrived.[172] The cargo recipients would present such a document to the *qāḍī* seeking contributions for losses if the entire consignment or part of it was cast overboard. The *qāḍī* could verify the information given in the letter through oral testimonies of the seller, shipowner, or those who were involved in packing and loading the shipment, and by comparing the details in the letter with those in the *shāmil.*

Beyond casting cargo and ship tackle overboard, the problem of jettisoning people was a question of basic human concern. It merited special treatment by classical Muslim jurists, who discussed the status of sailors and passengers on board ship in case of imminent danger of sinking. Two fundamental questions should be clarified: first, was it lawful to throw passengers overboard, and, second, did the *fuqahā'* discriminate between Muslims and *dhimmīs* (Christians and Jews), males and females, and freemen and slaves? Certainly, the sensible solution was to begin throwing commercial commodities followed by the animals "for the sake of a human being."[173] Al-Qarāfī condemned throwing any human being overboard.[174] The Mālikī jurist Saḥnūn held a similar view, as did the Andalusian Ẓāhirī jurist Ibn Ḥazm, who prohibited throwing any human being overboard "even if the matter concerned captives of polytheists."[175]

Al-Lakhmī (d. 478/108) decreed that two factors must be considered before throwing a slave overboard: (a) the ability of the slave to reach the coast by swimming, and (b) the distance of the ship from the coast.[176] Skillful swimmers amongst the slaves were to be thrown overboard if the ship was in the sight of the coast. By contrast, the Tunisian Khārijite jurist al-Shammākhī advocated throwing non-Muslim captives overboard in order to save the lives of Muslim naval

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[172] Udovitch, "Time, the Sea and Society," pp. 529-530.

[173] Qarāfī, *Al-Furūq*, vol. 4, p. 11: "*wa-yubda' bi-ṭarḥ al-amtiʿa thumma al-bahā'im li-sharaf al-nufūs.*"

[174] *Ibid.*, p. 11: "If there are only passengers on board, it is considered wrong to throw any person [overboard] for the sake of others even if he is a *dhimmī* [*wa-in lam yakun fi al-safina ghayr al-ādamiyyīn, lam yajuz ramy wāḥid minhum li-ṭalab najāt al-bāqīn wa-in kāna dhimmiyyīn*]."

[175] Ibn Ḥazm, *Al-Muḥallā*, vol. 7, p. 27; Saḥnūn, *Al-Mudawwana*, vol. 4, p. 495.

[176] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 238: "*murāʿat maʿrifat al-qawm wa-jahlihi (al-sibāḥa) wa-qurb al-barr wa-buʿdihi.*"

warriors and sailors.[177] Al-Qāḍī ʿIyāḍ also approved of forcing humans to abandon ship, but he ruled:

> Aside from commercial commodities, if there were only passengers and no commercial commodities, they were, after [the victims] had been chosen by lot,[178] indiscriminately subjected to being thrown overboard, regardless of their social status and allegiance, whether they were males or females, slaves or free men, Muslims or *dhimmis*.[179]

Ultimately, the issue of forcing human beings to abandon the ship under extreme danger remained questionable, and the majority of Muslim jurists opposed the practice.

Distribution of Losses

Any given merchant vessel would carry cargo belonging to multiple owners. Each of these owners had a common interest in ensuring the safe delivery of his cargo to port. More importantly, in the event that any cargo was jettisoned *en route* to its destination, the cargo owners would assume collective responsibility for financial losses. A. L. Udovitch terms this collective responsibility an "involuntary partnership" of cargo owners.[180]

If the ship's captain decided to throw a particular piece of cargo overboard for safety reasons, the owners of *all* cargo on board would bear the loss collectively—no matter to whom the jettisoned cargo originally belonged. If the parties concerned agreed upon jettisoning part of the cargo to lighten the ship, the goods remaining on board had to be distributed proportionately between the owners of the jettisoned merchandise and the owners of the remaining mer-

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[177] Shammākhī, *Al-Īḍāḥ*, vol. 3, p. 610.

[178] Buzurg Ibn Shahriyār, *ʿAjāʾib al-Hind*, pp. 58-59. Even if the victims were to be chosen by lot, it was most likely that the captain and his crew members were the last group on board to relinquish the vessel since they were "bound by oaths not to abandon it."

[179] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 235: "*wa-in lam yakun fī al-markab illā al-ādamiyyīn dūna al-matāʿ, taqārʿū ʿalā man yurmā minhum min al-rijāl, wal-nisāʾ, wal-ʿabīd, wa-ahli al-dhimma fī dhālika sawāʾ*...." Constable, "The Problem of Jettison," pp. 208-211, shows that medieval European lawyers were less concerned about addressing the issue of human jettison. In her opinion, the explanation for their lack of attention lies in the fact that most codes of sea law were very specific that free human lives had no price, and thus no possibility of compensation. In addition, lawyers preferred to address matters of commercial value.

[180] Udovitch, "An Eleventh-Century Islamic Treatise," p. 51.

chandise.[181] The owners of the jetsam acquired a share in the goods that remained safe. Their partnership comprised both the merchandise that was lost and that which remained, and their shares were based on the value of their own goods.[182] Thus, the value of the jettisoned merchandise would then be divided by the value of the remaining merchandise—be it a quarter or a third.[183] Once the calculation and distribution of losses had taken place, the owner of the jettisoned merchandise was entitled to half of the remaining merchandise if the value of his own jettisoned merchandise was equivalent to that which remained. If half of his total lost merchandise was worth a third or a half of the remaining merchandise, then he would be entitled to one third or one half of the remaining merchandise. If the jettisoned merchandise did not deteriorate and was later recovered by someone on board, the merchant was under obligation to return the contribution to the merchants who had paid him.[184]

Losses incurred in jettison, shipwreck, piracy, or war would be evaluated proportionally as to quantity and quality, and shared by those concerned.[185] Goitein brings to our attention interesting information from the Cairo Geniza indicating that this equal distribution did not comprise all those traveling in one caravan or a convoy, but "only those traders who had formed a special syndicate of common business interest in general."[186] Moreover, the Geniza merchants employed two methods to create insurance for themselves and to share the considerable risk of financial loss in maritime trade. The two methods were a combination of multiple ownership of goods and the distribution of these goods in multiple maritime carriers. As a consequence of this double insurance, the loss or damage to any single

[181] *Ibid.*, p. 51.

[182] *Ibid.*, p. 51; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 32: "*inna al-ḥukm fī dhālik, wa-huwa qawl Mālik, an yuqassam thaman al-matāʿ al-ladhī ṭuriḥa ʿalā al-matāʿ al-ladhī saluma, fa-yakūn ahl al-matāʿ al-ladhī ṭuriḥa shurakāʾ bi-thamanihi fī al-matāʿ al-ladhī saluma fī ghiyābihi wa-nuqṣānihi, yaṣīr al-matāʿ al-ladhī ṭuriḥa ka'annahu kān lahum, wal-matāʿ al-ladhī saluma ka'annahu kān la-hum kullahum, wa-innimā takūn sharikatahum fī al-dhāhib wal-bāqī ʿalā athmān matāʿihim.*"

[183] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 30.

[184] *Ibid.*, pp. 34-35; Qarāfī, *Al-Furūq*, vol. 4, p. 10.

[185] Ben-Sasson, *Yehudei Sitzilya*, pp. 210-214, doc. TS Ar. 5.1, l. 29; and pp. 350-358, TS 16.13, l. 28 (*al-taqsīṭ wal-sulfa*); TS 16.13 v., ll. 24 and 28. The Arabic term *taqsīṭ* signifies proportional participation in losses.

[186] Goitein, *A Mediterranean Society*, vol. 1, p. 348.

ship or even several ships was not normally a devastating financial blow to any individual merchant.[187]

The assessment of the monetary value of jettisoned cargo had to be associated with two cardinal components, *place* and *time*. As far as the place is concerned, the *fuqahā'* debated four methods of evaluating the jettisoned merchandise. The first is based on the value at the location where the merchandise was purchased.[188] This principle was applied to cases in which the goods were bought from a specific place. However, Ibn Rushd added that if they were purchased from various locations, the assessment must be calculated based on the current prices at the port of embarkation.[189] The second method of evaluation was based on the amount the owner paid at the port of embarkation [*ʿalā qīmat ruʾūs amwālihim fī al-mawḍiʿ al-ladhī ḥamalū minhu*].[190] The third was based on the place where the cargo was jettisoned [*fī mawḍiʿ ṭuriḥa fī al-baḥr*],[191] while the fourth method was based on the current price of the merchandise at the destination [*fī al-balad al-ladhī yuḥmal ilayhi*].[192] It is important to note that when the monetary value of the jettisoned merchandise was calculated, the taxes paid at the point of embarkation had to be excluded. Al-Qāḍī ʿIyāḍ quoted Abū Bakr Ibn ʿAbd al-Raḥmān (d. 432/1040) as saying: "The custom duty paid on goods is not included, and none of our scholars has discussed it since this duty is an official prerogative and there is no reimbursement [*lā yuḥsab al-maks ʿalā al-silʿa wa-lam yatakallam ʿalayhi aḥad min aṣḥābinā li-annahu ḥawz wal-ḥawz lā yalzam al-rujūʿ bihi*]."[193]

Less controversial was the principle of time which revolved around the value of the jettisoned commodity when it was purchased, or when it was loaded on board. This in turn raises another question: How should the parties involved evaluate the jettisoned articles when

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[187] Udovitch, "Time, the Sea and Society," pp. 538-539.

[188] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, p. 85.

[189] *Ibid.*, p. 86.

[190] *Ibid.*, p. 87; Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 311-312; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 24, 34, 36; Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 238.

[191] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 34, 36; Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, pp. 238-240.

[192] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 238; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 31. The valuation, as the Digest rules, should not be according to the price at which they were bought, but at that for which they will sell; see Constable, "The Problem of Jettison," pp. 214, 217.

[193] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 238.

they were not purchased at the same time? "Regardless of the time of purchase," Muslim jurists ruled, "the jettisoned merchandise must be evaluated based on the current market prices."[194] If the articles were loaded at different locations, however, their value had to be calculated based on the market prices on "the day of embarkation rather than the day of purchase [*ishtarakū bil-qayyim yawm al-rukūb dūn yawm al-shirā'*]."[195] The explanation of al-Qarāfī (d. 684/1285) leads us to infer that the criteria for evaluation of the jettisoned goods would be based on the market prices at the port of embarkation rather than anywhere else, even when the voyage was undertaken along the coast.

Our conclusion confirms Udovitch's opinion that: "The only possible sense that this criteria for evaluation can have, *i.e.*, based on the value of the place where the goods were jettisoned—is with reference to the nearest coastal or inland markets where such commodities were traded."[196] With the exception of Amalfitan practice, the maritime laws of Byzantium, Barcelona and Pisa ruled that if the jettison took place during the first half of the voyage, the goods should be valued at their purchase price. If it took place during the second half, they should be valued at their value in the port of arrival.[197]

Commercial Commodities and Personal Effects

Unlike Latin sea laws,[198] Islamic maritime practice did not include personal effects within the category of *general average*.[199] The Mālikī

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[194] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 86-87; Ṭāher (ed.), *Kītāb Akriyat al-Sufun*, p. 34.

[195] Qarāfī, *Al-Furūq*, vol. 4, pp. 9-10; Wansharīsī, *Al-Mi'yār*, vol. 8, p. 312; Ṭāher (ed.), *Kītāb Akriyat al-Sufun*, p. 30: "*fa-yuḥsab thamanuhu waqta udkhila fī al-markab.*"

[196] Udovitch, "An Eleventh-Century Islamic Treatise," p. 50.

[197] Ashburner, *The Rhodian Sea-Law*, p. cclxxviii; Stanley S. Jados, *Consulate of the Sea and Related Documents* (Alabama: The University of Alabama Press, 1975), p. 55, Article 97 in the Consulate of the Sea (dated from between 1260 and 1343 C.E.), referred to the procedure of evaluating the cargo thrown overboard, ruling: "If it was thrown overboard before the vessel covered half the distance to its destination, it should be valued at the price at the point of departure. If it was disposed after half the distance was traversed, the cargo tossed overboard as well as the cargo saved should be evaluated according to its value at the port of destination."

[198] Constable, "The Problem of Jettison," p. 214; Edwin Freshfield, *A Manual of Later Roman Law* (Cambridge: Cambridge University Press, 1927), p. 204.

[199] The word "average" never appeared in the Ecloga (later Roman law) and Rhodian Sea Law (Byzantine). The word *avaria*, the root of the English word "average," was used in medieval Latin to signify the distribution of losses occurring

fuqahā' ruled that none of the following private possessions should be taken into account in calculating the value of the jettisoned cargo: slaves, captives, jewels, precious stones, weapons bought as private property, and Qur'āns.[200] Any personal and private possession of great value, such as gold and silver, a deposit [*wadī'a*], or luggage that a passenger might carry, were not included in the calculation of the *general average* unless they were purchased for commercial purposes.[201] A distinction must be made between personal effects and commercial commodities.

Although commercial goods were generally reimbursable under the principle of *general average*, there were a few situations in which certain articles were not part of the calculation. The case of slaves exemplifies a notable instance. The jurists expressed three points of

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en route. Salvatore Battaglia, *Grande Dizionario della Lingua Italiana* (Napoli, 1961), vol. 1, p. 871, writes: *Dall' Ar. 'awārīya, 'merce avariata', deriv. da 'awār, 'danno deteriorameto'*; Emili Vallès, *Pal-Las Diccionari Català* (Barcelona, 1962), p. 60: *avaria; Dany sofert per les mercaderies en el transport.* The Spanish equivalent is *averî*: Aldo Duro, *Vocabolario della Lingua Italiana* (Roma: Instituto della Enciclopedia Italiana, 1986), vol. 1, pp. 359-360, among the other meanings the editor writes: (a) "*Qualunque danno sofferto da una nave.*" (b) "*Nella tecnica dei trasporti, danno o deterioramento sofferto da una merce in viaggio...*"; W. H. Maigne D' Arnis, *Lexicon Manuale Ad Scriptores Mediae Et Infimae Latinitatis* (Paris, 1866), p. 251: "*Avaria: indemnité payée aux négociants dont les merchandises ont péri en mer par suite de la nécessité où on s'est trouvé d'en alléger le navire, par ceux dont les ballots, n'ayant pas eu le même sort sont arrivés à bon port.*" "*Avaria grossa: Lancement à la mer du grèement et du chargement du navire pour l'alleger dans un cas de danger.*"
Etymologically, the word *avaria* must have been Latinized from Arabic. The Latin word *avaria* was derived from the Arabic *'awār*, or *'awārīya*, which means an article of merchandise that has been damaged during the voyage. This interpretation does not necessarily mean that Muslims were the first to establish the laws of *general average*; however, they did develop it further than what was found in the Latin sources of the late twelfth century. Muḥammad Murtaḍā al-Ḥusaynī al-Zabīdī, *Tāj al-'Arūs*, ed. by Ḥussayn Naṣṣār (Kuwait, 1394/1974), vol. 13, pp. 157-158; Edward William Lane, *Arabic-English Lexicon* (Beirut: Libraire du Liban, 1980), vol. 5, p. 2195: "*'awār*, or *'uwār*: a defect or an imperfection in an article of merchandise and in a garment, or piece of cloth, and in a slave, and in a beast, and so in the like, and in a house or tent."

[200] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 31; Wansharīsī, *Al-Mi'yār*, vol. 8, p. 311; Shammākhī, *Al-Īḍāḥ*, vol. 3, p. 610; Qāḍī 'Iyāḍ, *Madhāhib al-Ḥukkām*, p. 240.

[201] Ibn Rushd, *Fatāwā*, vol. 1, pp, 1191-1193; Wansharīsī, *Al-Mi'yār*, vol. 8, p. 312; Qāḍī 'Iyāḍ, *Madhāhib al-Ḥukkām*, p. 236: "Whatsoever was purchased for personal and private usage ... is not included in the calculation of the *general average* [*inna mā ushturiya lil-qinyat ... lā yadkhul*]." In the passage al-Qāḍī 'Iyāḍ quotes jurisprudential viewpoints of some of Mālik's colleagues who include the private and personal effects of passengers within the category of reimbursement: Qāḍī 'Iyāḍ, *Madhāhib al-Ḥukkām*, p. 236. Another quotation justifying this legal opinion appears in al-Wansharīsī, *Al-Mi'yār*, vol. 8, p. 298.

view. The first included slaves within the principle of *general average*, regardless of whether they were bought for commercial purposes or personal services [*li-tijāra aw qinya*].[202] The second opinion, advocated by Ibn al-Jahm, forbade sacrificing any human being for the sake of others due to the tacit prohibition of Islamic law [*li-annahum muḥarramū al-qatl*]; therefore slaves were not considered in the *general average*.[203] The advocates of this rule argued that since the law does not discriminate between humans, the implementation of the rule upon slaves signifies the subjection of free people to this category, too.[204] The third precept distinguished between those slaves who were purchased for commercial purposes and those purchased for private services. A slave who was bought as a private possession was excluded from the principle of *general average*. In addition, slaves who served on board were not subject to contribution.[205]

The legal status of the ship itself was also controversial. The jurists held four different opinions. The first legal opinion disapproved of the inclusion of the ship and its tackle when assessing the value of the jettisoned merchandise. The advocates of this view held that "it is inappropriate to include the ship within the calculations and principles of the *general average* since this situation is similar to a camel who lacked strength in the middle of the way and could not carry the load thereafter. The camel master, in this case, is allowed to throw the load off the camel without his being bound to remunerate the owner of the merchandise."[206] Furthermore, when the shipowner threw a lifeboat overboard, or cut masts, ropes, and other ship's tackle, these items were not included in the *general average*.[207]

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[202] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, pp. 236, 240; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 31; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 311; Shammākhī, *Al-Īḍāḥ*, vol. 3, p. 610.

[203] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 238; Qarāfī, *Al-Furūq*, vol. 4, p. 10; Rafīʿ, *Muʿīn al-Ḥukkām*, vol. 2, pp. 526-527.

[204] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 236: "The ship and free passengers on board are included in the principle of the *general average* [*inna al-markab wa-mā fīhi min al-aḥrār yadkhul fī al-maqāṣa*]." Another legal point of view rejects the implementation of the principle of *general average* on the vessel and free passengers. *Ibid.*, p. 236; Qarāfī, *Al-Furūq*, vol. 4, p. 10; Rafīʿ, *Muʿīn al-Ḥukkām*, vol. 2, p. 527.

[205] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 236; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, p. 86. Similarly, the Rhodian Sea-Law rules that if the captain abandons a slave received by way of deposit, he shall make restitution to the slave's master; see Freshfield, *A Manual of Later Roman Law*, p. 199.

[206] Qarāfī, *Al-Furūq*, vol. 4, p. 10.

[207] *Ibid.*, p. 10; Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 236.

The second group held the opinion that the shipowner was to remunerate the merchants if it could be proved that he jeopardized the vessel and cargo by sailing in unfavorable weather conditions and rough sea [*yadkhul al-markab fī al-muḥāṣṣa li-mā thabuta ʿalā rabb al-markab annahu yaqtaḥim hawla hādhā al-baḥr wa-yatajāsar ʿalayhi ʿinda ʿasfihi*].[208] The third group of jurists approved the inclusion of the vessel as long as the jettison occurred at the port.[209] The fourth group ruled that regardless of the motive and the circumstances that forced the captain, crew, and passengers to jettison cargo overboard, the vessel must be subjected to contribution.[210]

This final argument suggests that if the ship was either damaged, or lost, but the goods were saved, they were subject to contribution. Likewise, if the cargo was lost, and the ship was saved, the latter would also be included within the principle of *general average*.[211] These rules could be implemented when local custom allowed for the inclusion of a commercial ship under the category of *general average*. Yet, one may ask: who determined the actual price of the vessel, and how?

The legal status of the ship changed as soon as goods were cast overboard. When the ill-fated vessel anchored at the port of origin, the owners of the jettisoned cargo were entitled to receive compensation from its master. Under this scenario the financial arrangements of remunerating the owners of the jetsam can be reconstructed as follows. The shipowner could either pay the merchants in cash, or the latter could involuntarily become shareholders in the ownership of the vessel if the owner did not have the money available. Otherwise, the shipowner could offer his vessel for sale to enable him to compensate the unfortunate lessees. If the shipowner opted for the last solution, witnesses of good reputation [*ahl al-ʿudūl*] who were well versed in nautical technology and shipbuilding, would examine the

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[208] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 235.

[209] Wansharīsī, *Al-Miʿyār*, vol. 8, p. 306.

[210] Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, pp. 237-240: "The vessel must be included in the calculation of the *general average* since the cargo was jettisoned to save the ship [*yaṣiḥḥ idkhāl al-markab fī al-muḥāṣṣa li-anna fī najātihi ṭuriḥa mā fihi*]"; Qarāfī, *Al-Furūq*, vol. 4, p. 10: "*qāla Saḥnūn: yadkhul al-markab fī qīmat al-maṭrūḥ li-annahu mimmā salum bi-sabab al-ṭarḥ*"; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 306; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 36.

[211] Wansharīsī, *Al-Miʿyār*, vol. 8, p. 299; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 35; Qāḍī ʿIyāḍ, *Madhāhib al-Ḥukkām*, p. 239; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 8, p. 498.

physical condition and determine the actual price of the inauspicious vessel *before* sending it for repairs. Accordingly, it is understood that this vessel would be valued as if it was for sale. In general, a sales contract involved a full description of the ship's type, its external and internal structures, and its equipment such as tackle, cables, ropes, baskets, nautical instruments, anchors, cabins, sails, masts, and levels.[212]

Summing up this discussion, Islamic law decrees that under adverse weather conditions the shipmaster was allowed to cast cargo overboard. In case of ordinary jettison, where there was time for consultation, the captain had to confer with the merchants, or, if the merchants were absent, with their agents, and with crew members, before tossing the cargo overboard. Ordinarily, the heaviest cargo, if it was accessible, had to be thrown first; otherwise, lighter goods and those nearest at hand would be jettisoned when the danger of foundering was imminent. Moreover, most scholars disapproved of throwing humans overboard regardless of their social and religious affiliation.

Classical Muslim jurists employed three legal methods to controvert or corroborate the act of jettison. First, the captain and his crew could protect themselves by taking an oath that throwing cargo overboard was imperative. Second, testimonies of other sailors and passengers sailing in a convoy could substantiate or rebut the captain's oral deposition. Third, the judge could require experts in maritime industry and technology to inspect the ship's hull if it had suffered damages *en route* to its destination.

In addition to the oral testimonies, arguments raised regarding the jetsam's description were also settled by presenting documentary evidence to the court. These documentary proofs were of four types. Initially, the cargo book [*shāmil*] was considered as the most reliable source owing to the fact that the complete details of the quality and quantity of the cargo were registered before the ship set sail. Alternatively, the merchant, for his part, would summon his booklet [*daftar*] to the court. This booklet, as was discussed earlier, contained, among other things, reports about goods delivered to or from certain ports. Thirdly, like the two aforesaid written documentations, leasing

[212] Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, p. 95.

contracts, especially those that contained particular articles concerning the quality and quantity of the shipment, would also be considered by the judicial authorities. Lastly, letters of speedy transmission, which usually reached the consignment receiver before the arrival of the vessel at port, might have been regarded as of great legal importance. So far I have not come across a decisive piece of evidence from the Geniza documents proving the hypothesis that such material was presented to the *qāḍī* to resolve disputes between the lessor and lessee. Therefore, this issue needs further study.

When part of the shipment was jettisoned, the owners of jetsam became partners, proportionately, in the goods that remained safe. This legal act is termed by Udovitch as an "involuntary partnership." However, losses incurred in casting cargo overboard would be evaluated proportionately, taking into account the quantity and quality of the jetsam, and shared by those involved.

The assessment of the jetsam remained controversial. Jurists held four opinions based on: (a) its value where it was purchased, (b) the price at the port of embarkation, (c) the value where the goods were cast, and (d) the cost at the port of debarkation. Thus, the most sensible of these solutions is based on the current market price at the port of embarkation, regardless of when the cargo was purchased. Except for commercial goods, Islamic law never included personal effects within the category of *general average.*

Finally the Geniza letters shed further light on this sphere. The merchants of the classical Geniza employed two additional methods of distributing losses. The first was to arrange and transport their shipments in multiple maritime carriers sailing in a convoy; thereby, they could avoid huge losses if a catastrophe occurred *en route.* Alternately, as Goitein has indicated, the Geniza merchants formed some sort of mercantile syndicate. Merchants of common business interest would share the losses with one another in case of loss of cargo owing to man-made or natural dangers.

Section IV

Collision

Force majeure, or "Acts of God" such as inclement weather and rough seas, often caused collisions. When such a collision was unavoidable, and vessel *A* collided with *B*, *B* could not press a claim for financial

compensation. The captain and crew of ship *A* needed only to swear that the collision was unintentional and unavoidable.[213]

Some Muslim jurists, mainly Shāfiʿīs, insisted on drawing a distinction between ships at sail and those at anchor. If a collision occured on the high seas, shipowners had to compensate the merchants and crew for their losses. However, shipowners had no obligation to indemnify cargo owners in the case of a collision between anchored ships.[214]

A collision also could occur due to the captain's navigational error. The negligent captain of a ship on the high seas, for example, might collide with a ship at anchor. In this case, the owner of the colliding ship had to compensate the other, provided that the collision was possibly "unavoidable."[215] Al-Shāfiʿī (150-204/767-820) emphasized that even a negligent captain did not have to compensate any of the parties involved when a collision was unavoidable or unintentional [*wa-in ṣudimat safīna bi-ghayr an yuʿmad bi-hā al-ṣadm, lam yuḍman shayʾan*].[216] If two ships were at full sail, and if the captain of either ship deemed a collision unavoidable, jurists lay the responsibility upon the *ʿāqila*[217] [*fal-diyya ʿalā al-ʿāqila*]. In this respect the term *ʿāqila* does not refer to the family or tribe of the captain who committed the navigational error, but to the shipowner, *i.e.*, the employer, who was

[213] Ibn Qudāma, *Al-Mughnī*, vol. 12, p. 549; Saḥnūn, *Al-Mudawwana*, vol. 4, pp. 492-493, vol. 6, p. 446; Ghazzālī, *Al-Wajīz*, vol. 2, p. 152; Ḥillī, *Al-Sarāʾir*, vol. 3, pp. 399-400. According to Malayan Sea Law, if, during a heavy sea or high winds, a vessel runs afoul of another vessel, the loss shall not be considered as an accident but as a fault, because, when there is a heavy sea the vessel ought to be kept out of the way of such occurrences; Raffles, "The Maritime Code of the Malays," p. 73.

[214] Shāfiʿī, *Al-Umm*, vol. 6, pp. 86, 171; Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, pp. 189-190; Muḥammad Ibn Ibrāhīm Ibn al-Mundhir, *Al-Ishrāf ʿalā Madhāhib Ahl al-ʿIlm* (Qaṭar: Dār al-Thaqāfa, 1986) vol. 2, pp. 183-184; Aḥmad Ibn Yaḥyā Ibn al-Murtaḍā, *Al-Baḥar al-Zakhkhār al-Jāmiʿ li-Madhāhib ʿUlamāʾ al-Amṣār* (Beirut: Muʾassat al-Risāla, 1975), vol. 6, p. 248.

[215] Ibn Qudāma, *Al-Mughnī*, vol. 12, p. 550; Saḥnūn, *Al-Mudawwana*, vol. 6, p. 446.

[216] Shāfiʿī, *Al-Umm*, vol. 6, p. 86.

[217] R. Brunschvig, "ʿĀkila," *The Encyclopaedia of Islam* vol. 1 (1986), pp. 337-340; Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1993), p. 186. Normally, the term *ʿāqila* denotes the group of persons upon whom devolves the payment of compensation in cash or in kind, as a result of a natural joint liability with a person who committed homicide or inflicted bodily harm. That is to say, the culprit himself does not pay the blood money to the family of a victim of a homicide, but rather the group with which he was affiliated must pay the *wergild*.

liable to pay compensation in cash or in kind to the owner of the damaged vessel.[218]

Captains of riverboats were liable for collisions when they were negligent. However, the rules governing river traffic differed from those governing sea traffic in that jurists usually assigned blame to the ship sailing downstream. Jurists drew an analogy between ships on the high seas and riverboats sailing downstream, and between anchored ships and riverboats sailing upstream. Just as a ship at sail was at fault if it collided with a ship at anchor, so too was a riverboat traveling downstream at fault if it collided with a riverboat traveling upstream. With few exceptions, the captain of the downstream boat incurred liability for the entire loss of cargo and physical damage to the ship traveling upstream. The chief exception to this general rule came when the captain of an upstream boat was negligent in his duties. In this case, the captain had to compensate his victims.[219] Jurists in the Malayan archipelago held a similar viewpoint, but jurists in the Mediterranean disagreed with their counterparts in the Indian Ocean over the sum of compensation that a ship's captain had to pay.[220]

In case of a collision between two vessels sailing in a convoy, the master of the stricken vessel had to lodge a complaint before a judge. The collider had to indemnify two-thirds of the impacted ship's loss if the collision took place at night or during a storm. If it took place during the day, the captain had to refund the losses in full.[221]

Collisions might also result from the negligence of *both* captains. In this case, each captain was liable for half the cargo on his ship, and half the cargo on his counterpart's ship. That is, if *A* collided with *B*, *A* must pay for half of his own cargo, and half of *B*'s cargo as well. If either captain proved that the collision did not result from negligence, the judges would free him from indemnifying shipowners and merchants.[222]

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[218] Shāfiʿī, *Al-Umm*, vol. 6, p. 171; Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 189; Ibn al-Mundhir, *Al-Ishrāf*, vol. 2, p. 183.

[219] Shāfiʿī, *Al-Umm*, vol. 6, p. 86; Saḥnūn, *Al-Mudawwana*, vol. 4, pp. 492-493; Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 189; Ibn al-Mundhir, *Al-Ishrāf*, vol. 2, p. 183; Ibn al-Murtaḍā, *Al-Baḥar al-Zakhkhār*, vol. 6, p. 248; Raffles, "The Maritime Code of the Malays", pp. 72-73.

[220] Winstedt & de Josselin, "The Maritime Laws of Malacca," p. 54.

[221] *Ibid.*, p. 54.

[222] Shāfiʿī, *Al-Umm*, vol. 6, p. 86; Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 188; Ibn Qudāma, *Al-Mughnī*, vol. 12, p. 549; Ghazzālī, *Al-Wajīz*, vol. 2, p. 152; Bayḍāwī, *Al-*

Ibn Qudāma (541-620/1146-1223) summarized the assignment of responsibility and retribution as follows:

> If the two overseers [captains, *qayyimān*] owned both ships including their contents, they jointly and proportionately share the losses and the costs of the damage to both vessels, and each party receives his share. If the overseers were employees, they are indemnified against any losses since the responsibility for damages and losses is laid upon their employers. If there were freemen who perished on both ships, and, if the collision was intentional which would usually cause the loss of lives, the ships' overseers had to be held responsible, and they were to be penalized for this incident. If the victims were slaves, then the overseers of both, if they were freemen, are exempted from penalty. If the collision was not intentional and was not life threatening, it is incumbent upon the shipowners to pay blood money [*diyya*] to the families of the victims [*wajubat diyyat al-aḥrār ʿalā ʿāqilat al-qayyimayn*], and the value of the slaves to their owners. If both captains happened to be slaves, they are still liable for the losses. If all of them [the passengers and crews of both ships] drowned, the guarantee becomes invalid. If the collision was unintentional, then no party is to be held responsible. If there were deposits and commercial merchandise on both ships, these are not guaranteed so long as the overseer was not negligent or transgressive. If both ships were leased, they must be considered as a trust and they are not liable for retribution. If both captains were carrying money to another country, they are not liable for the losses since the collision was unavoidable.[223]

Throughout this short account, we have attempted to summarize judicial viewpoints on the problem of collisions. When a collision resulted from natural factors—such as inclement weather conditions or rough seas—jurists absolved the collider from responsibility, providing that the collider swore the collision was unavoidable. In all situations, the collider had to pay retribution if he was found negligent.

In the case of river traffic, Muslim jurists held, as did their pre-Islamic predecesors, that ships sailing downstream had to yield to those going upstream. Otherwise, the jurists held the owner of the downstream ship responsible for all damages incurred from a collision.

Ghāya al-Quṣwā, vol. 1, p. 901; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 337; Wansharīsī, *ʿUddat al-Burūq*, pp. 629-630.

[223] Ibn Qudāma, *Al-Mughnī*, vol. 12, pp. 549-550.

SECTION V

Salvage

Goods cast overboard might become the object of disputes for a number of reasons. Goods might be thrown overboard during a gale to lighten the ship's ballast, or might be cast ashore due to a shipwreck, and then be found by a scavenger, washed up on shore, floating on the surface of the sea, or at its bottom. Muslim law covered all these scenarios.

If goods had been jettisoned and were found on either the surface or the bottom of the sea, they were not considered derelict property and had to be delivered to the rightful owners, who must in turn reward the salvager for his efforts. Latin law allowed a salvager to claim a certain percentage of salvaged goods.[224] Islamic law—except in the case of Malaysian customary law[225]—did not. Islamic codes did permit the salvager to charge the owners for his labor, at the prevailing market wages for a day laborer. In addition, he could levy freight charges if he transported the goods over a great distance. Nonetheless, he could not insist upon a share of the goods themselves.[226]

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[224] Ashburner, *The Rhodian Sea-Law*, pp. cclxxxix-ccxcii. Catalan sea law distinguished between salvage of cargo on the high seas, and salvage that takes place in port, or on the shore. With regard to the former situation, article 160 rules: "Should a sailor find any object during the period of his enlistment, the vessel shall be entitled to three parts and he to one part of the salvage, regardless of the amount of the salvage, be it large or small. If the crew while sailing should discover these objects which may consist of cargo, and when ordered by the master of the vessel shall attempt to recover these floating objects even if it is not cargo, provided that the crew receive its share, as has been stated above. The patron [*i.e.*, the shipmaster] of the vessel is entitled to such a large part of the salvage because he feeds and pays the wages of the crew." Article 252 which deals with the second case rules: "If some cargo is salvaged in the shallows, in port, or on the shore, regardless of whether it has been floating on the water or has been washed ashore, anyone who salvages such a cargo in the shallows, in port, or on the shore, if the waves had washed it ashore, shall be allowed to keep half of such cargo, provided he has notified the local civil authority about it. The governmental authorities shall place such cargo on public display for a year and one day." See Jados, *Consulate of the Sea*, pp. 83-84, 158.

[225] Raffles, "The Maritime Code of the Malays," p. 80; Winstedt & de Josselin, "The Maritime Laws of Malacca," pp. 52-53. The salvager is entitled to receive 10%-33% of the real value of the salvaged cargo, and the owner receives the remainder.

[226] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, pp. 358-359; Majlisī, *Milādh*, vol. 11, p. 418.

An exemplification from actual practice of the theoretical pronouncements given by Muslim jurists is found in one of the Geniza letters dated from 1139 C.E. In addition to the commercial transactions mentioned in the letter, the recipient of the shipment described at length how the ship's captain had difficulty with the vessel so that it foundered against Bāb al-Mandeb. He goes on to recount the expenses incurred for the salvage:

> The pepper was lost completely; God did not save anything of it. As to the iron, mariners were brought from ʿAden, who were engaged to dive for it and salvage it. They salvaged about one-half of the iron, and, while I am writing this letter, they are bringing it out of the Furḍa [the customs house of ʿAden] to the storehouse of the illustrious elder, my master Maḍmūn b. al-Ḥasan. All the expenses incurred for the diving and for transport will be deducted from whatever will be realized for that iron and the rest will be divided proportionally, each taking his proper share.[227]

We turn to the issue of ballast and shipwreck. Muslim jurists did not reach any consensus as to ownership of salvage from shipwrecks. The Ẓāhirīs held two points of view. The first opinion stipulated that goods salvaged from the bottom of the sea would become the possession of whoever dove to retrieve them [*wa-man ghāṣ ʿalā shayʾ fa-istakhrajahu fa-huwa lahu*].[228] Conversely, the second view did not force the real owner of the salvaged goods, in case they were returned to him, to indemnify the salvager for his exertions and other expenses since he had acted voluntarily [*wa-lā yulzam man wajada matāʿahu idhā akhadhahu an yuʾaddiya ʾilā al-ladhī wajadahu mā anfaq ʿalayhi, li-annahu lam yaʾmurahu bi-dhālik, fa-huwa mutaṭawwiʿ bi-mā anfaq*].[229] Likewise, the Shīʿite jurists ruled that if a ship was wrecked and its goods cast ashore, their owners were more entitled to recover them than the salvagers [*fa-huwa li-ahlihi aḥaqqu bi-hi*], but whatever the divers retrieved from the bottom of the sea became their possession as long as its owner relinquished his claim to the salvaged goods [*wa-mā ghāṣ ʿalayhi al-nās wa-tarakahu ṣāḥibahu fa-huwa lahum*].[230] The Khārijite scholars also allowed the salvager to retain the salvage unless he was rewarded by the real owner. However, if the owner of the salvaged

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[227] Goitein, *Letters*, p. 189, doc. TS 24.64.

[228] Ibn Ḥazm, *Al-Muḥallā*, vol. 7, p. 84.

[229] *Ibid.*, vol. 7, p. 84.

[230] Ṭūsī, *Tahdhīb*, vol. 7, p. 219; Ḥillī, *Al-Sarāʾir*, vol. 2, p. 195; Khawansārī, *Jāmiʿ al-Madārik*, vol. 6, pp. 72-73; Majlisī, *Milādh*, vol. 11, p. 418.

cargo promised to pay the salvage costs, he would have to fulfill this responsibility by paying the salvager the amount fixed by the two parties prior to the salvage operation.[231]

The general attitude of three Sunnī law schools, the Mālikīs, Ḥanafīs, and Ḥanbalīs, affirmed that under any circumstance, whether the jetsam was found on shore or retrieved from the bottom of the sea, the finder had to deliver the recovered jetsam to the owner and he was to be rewarded in return.[232] Nevertheless, some Mālikī *fuqahā'* were inclined to believe that the finder was entitled to claim the salvaged merchandise as a private possession particularly since it had been jettisoned under circumstances of desperation [*innahu li-man wajadahu idh qad alqūhu bi-aydīhim min wajhi al-ya's*].[233]

If the merchandise was found on the shore or retrieved from the bottom of the sea, the salvager legally had the right either to keep it in his possession or deliver it to the local governor [*sulṭān*] or *imām* until its owner appeared.[231] Ibn Ḥazm dismissed the principle of delivering the salvaged merchandise to a religious or a civil authoritative official and recommended that the salvager retain it for a period defined by law: "What is the relation between the salvaged article and the *imām*? The salvager does not have to hand it over to the *imām*."[235] This opinion was confirmed by Mālikī jurists who ruled that there is no law obliging the salvager to turn over the salvage to the *sulṭān* or *imām*.[236]

In an attempt to discuss the subject from various judicial viewpoints, Muslim jurists also examined the legal status of salvage found along a coastal town populated by *dhimmī*s only. Ibn Rushd writes:

> Mālik was asked about a salvage found in a coastal settlement populated by *dhimmī*s only? He answered: "It should be delivered to their religious leaders [*aḥbārihim*]." Muḥammad Ibn Rushd states: "It is an unsettled problem. It is in the realm of possibility that the merchandise belongs to a Muslim even if it was found by a *dhimmī*. As a precau-

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[231] Kindī, *Al-Muṣannaf*, vol. 18, p. 63.

[232] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, pp. 358-359; Nawawī, *Rawdat al-Ṭālibīn*, vol. 7, p. 194; Ibn Taymiyya, *Fatāwā*, vol. 30, pp. 414-416.

[233] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, p. 374.

[234] *Ibid.*, p. 374. In vol 15, p. 373, Ibn Rushd quotes Ibn al-Qāsim who decrees that the finder is entitled to possess the salvage as long as the real owner is unknown: "*huwa li-man wajadahu illā an yu'raf ṣāḥibahu fa-yu'addīhi ilayhi.*"

[235] Ibn Ḥazm, *Al-Muḥallā*, vol. 7, p. 84: "*wa-mā lil-imām wa-lahā? lays huwa mimmā yulzim al-nās an yarfa'ūhā ilā al-imām.*"

[236] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, p. 374.

> tionary measure, it should not be delivered to their religious leaders unless it has been determined, beyond the smallest doubt, that the merchandise belongs to their community. If the merchandise has been handed to them [*i.e.*, their religious leaders] after identification and its owner shows up, it must be returned to him. The principle is that the merchandise is supposed to be delivered from the beginning to them if they learned with certainty that that merchandise, without doubt, belongs to the community. This is despite the fact that some of their scholars claim that according to their law the salvaged goods must be managed by their religious community [*milla*]. On the other hand, if it is not verified that the owners are *dhimmīs*, then by analogy [*qiyās*] the merchandise should not be handed to their religious leaders, and will become an endowment fund [*mawqūfa*] in perpetuity. *Success is granted by God.*"[237]

Regardless of the religious affiliation of the unfortunate merchant, Islamic law, thus far, rules that the salvaged cargo should be turned over to the real owner, or to the court of his religious community in order to be transmitted to his legal heirs if he has drowned. We see this actual practice in an important legal document from the Geniza (dated January 1143 C.E.). It deals with a foreign Jewish merchant "who drowned in the sea near Alexandria [*al-ladhī ghariqa fī al-baḥr qarīb min Iskandariyya*]." Legally, if the salvaged cargo was found off Islamic shores or in ports, it should first be submitted to the *qāḍī*, who, for his part, had to deliver it to the religious leader of the community. Attended by two Jewish witnesses, the *qāḍī* of the city transmitted the cargo to Samuel ha-Nagīd in the rabbinical court of Alexandria.[238]

Similarly, an important Jewish *responsum* from the Cairo Geniza deals with, among other issues, a maritime disaster that befell commercial ships heading for Egypt. The legal document was addressed by the Sicilian Jewish community and its *bēth dīn* to Elḥanan b. Ḥushiel and Jacob ha-Nagīd b. ʿAmram,[239] the heads of congrega-

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[237] *Ibid.*, p. 375.

[238] Goitein, *A Mediterranean Society*, vol. 1, pp. 62-62, doc. TS 13 J 3, f. 4.

[239] Elḥanan b. Ḥushiel, who bore the titles the great rabbi, court president, and academy head, was active and influential in the Qayrawānī community. Jewish *responsa* from the Geniza show that he was highly respected in the Sicilian community. Jacob ha-Nagīd b. ʿAmram, the second Qayrawānī leaders, after Abraham b. ʿAtā', to bear the title *Nagīd*, assumed office about 1035 or 1037 C.E. His sphere of operations and influence was quite extensive. In addition to his official duties involving the Qayrawānī, al-Mahdiyya, and Sicilian Jewish communities, and the Zīrid authorities, he also concerned himself with the requirements of the academies both in Palestine and Babylonia. See H. Z. Hirschberg, *A History of the Jews in North Africa*

tions of Qayrawān and the neighbouring Mahdiyya. The Sicilian community appealed to the *Nagīd*, who probably exercised political authority over all the Maghrībian communities, to intervene and employ his influence at the Zīrīd royal court to gain the release of salvaged mechandise from ships that foundered off the Sicilian coast. When a part of the goods had been saved, the ruler ordained that goods belonging to people not present on the boats should be sold by auction, with the yield to go to the exchequer. While this actually occurred with the merchandise of the non-Jews, the two communal leaders succeeded in saving the goods of their co-religionists and having them returned to their owners or their heirs.[240]

Many commercial treaties concluded between the Latin and Islamic worlds contained specific stipulations concerning the legal status of flotsam found in the *territorial waters*, or on the shores of either territory. A treaty concluded between the Mamlūk *sulṭān* Qalāwūn (678-689/1280-1290) and Lady Margaret of Tyre in 684/1285 stated that when a ship of either party is wrecked, if it belongs to a Muslim it shall be delivered to him, if he is found; or to the *sulṭān*'s delegates if he is lost. If it belongs to a Christian from the *sulṭān*'s territory, *i.e. dhimmī*, the procedure shall be as in the case of a Muslim. If on the other hand he is of the people of Tyre, the subjects of the Lady of Tyre, the chattels shall be delivered to him or to her administration, if he is lost.[241] Regardless of the religious affiliation of the drowned merchant, the *sulṭān*, as many international commercial treaties have proved, was authorized to claim and retain flotsam of an indigenous merchant if the vessel foundered off foreign territories. In this case, the law ruled that the *sulṭān* was under obligation to transfer the salvaged cargo to the real heirs if they were known, or to keep it in the state warehouses for a defined period until the rightful owners

(Leiden: Brill, 1974), pp. 213-216, 240; Menahem Ben-Sasson, "The Jewish Community of Medieval North Africa—Society and Leadership, Qayrawān 800-1057," unpubl. Ph.D. thesis (The Hebrew University: Jerusalem, 1983), pp. 256-264; Mark Cohen, "New Light on the Conflict over the Palestinian Gaonate, 1038-1042, and on Daniel b. ʿAzarya: A Pair of Letters to the Nagīd of Qayrawān," *Association for Jewish Studies Review* 1 (1976), pp. 4-5.

[240] TS 24.6, ll. 21-27 published in Jacob Mann, *The Responsa of the Babylonian Geonim as a Source of Jewish History* (Tel Aviv, 1970), pp. 162-164, 175-179; Ben-Sasson, *Yehudei Sitzilya*, pp. 107-112.

[241] P. M. Holt, "The Treaties of the Early Mamluk Sultans with the Frankish States," *Bulletin of the School of Oriental and African Studies* 43 part 1 (1980), p. 75.

appeared. If they did not, the merchandise would become the possession of the government.

Customarily, whoever held the salvage was required to contact the owner if his name was marked on it. If he transgressed this rule by selling or retaining it, the salvager would pay a penalty corresponding to the value of the salvaged object.[242] Salvagers had to keep an object worth twenty *dīnār*s or more for one lunar year [*hijrī*], that is 355 days [*fī al-ḥājj yajid al-laqṭa naḥwa min ʿishrīn dīnār aw akthar fa-yuʿarrifuhā sana*]. By contrast, salvagers should retain lower-priced articles for a few days.[243] Thus, if the rightful owner of the salvaged cargo did appear to claim his cargo within the established period, or if he decided to relinquish the damaged goods, the salvager was authorized to keep the goods or deliver them to religious endowments and indigent people.[244] These rules were also applied to human beings who were rescued from drowning or found on Islamic shores. However, if the identity of the rescued person was known, the salvager had no legal right to enslave him or take him into captivity.[245]

When the jettisoned cargo was salvaged, the merchant was obligated to pay the shipowner for the freight, regardless of whether he donated his salvaged goods to religious or private endowments. The norms of paying the freight depended on two principles: the distance covered by the ship and the condition and quality of the salvaged cargo. This explanation is given in the following inquiry:

> The *qāḍī* of Tripoli wrote to Saḥnūn [160-240/776-854] asking him about a vessel which suffered a wreck off Barqa. A person who brought six bales to Tripoli claimed that they were salvaged from that wrecked ship. While some of the bales were identified and retained, the unidentified units were sold for a certain amount of *dīnār*s. When the owners of the identified salvaged bales appeared in Tripoli, the salvager

[242] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, p. 375.

[243] *Ibid.*, pp. 372-373; Ibn Ḥazm, *Al-Muḥallā*, vol. 7, p. 84; Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, pp. 407-409. As far as Latin practice is concerned, the Consulate of the Sea rules that the salvager shall be allowed to keep half of the salvaged cargo, provided he has notified the local civil authority about it. The governmental authorities shall place such cargo on public display for a year and a day (which in Christian countries would be 366 days). See Jados, *Consulate of the Sea*, p. 158.

[244] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, pp. 372-373; Ṭāher (ed.), *Kītāb Akriyat al-Sufun*, p. 30; Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, p. 408; Kindī, *Al-Muṣannaf*, vol. 18, p. 61; *ibid*, vol. 22, p. 149.

[245] Kindī, *Al-Muṣannaf*, vol. 18, p. 62: if the identity of the rescued person remains unknown until the end of the interval period, the salvager has the right to take him into captivity, or even enslave him: "*fa-huwa bi-manzilat al-laqṭa.*"

> handed them their bales, but they [the owners] decided to donate them to the salvager because they were damaged by water. Meanwhile, the shipowner, for his part, demanded payment from the merchants for the freight. He responded: "If the article of charter was established to transport the goods from Cairo/Fusṭāṭ to Tripoli, then, as Mālik ruled, the fee is payable at the destination, whereas Ibn Nāfiʿ ruled that the merchants must pay the freight in accordance with the distance covered. But in your inquiry since a part of cargo arrived at Tripoli ... therefore, the shipowner is entitled to collect the fee proportional to the benefit accrued to the merchants at Barqa."[246]

Wherever the salvage was found—either floating on the water, at the bottom of the sea, or on the shore—the law insisted that the salvager report his discovery to local civil and religious authorities. Furthermore, he must hand the salvage over to the original owners if their names appeared on the salvaged material; only if the owners did not come forward after a set period of time could the salvager claim private ownership of his discovery. The rightful owner of the salvage, however, did have to pay any expenses the salvager might have incurred for labor, transportation, storage, and so forth.

[246] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 29-30.

CHAPTER FOUR

MILITARY MARITIME LAW

In Muslim legal theory, the objective of war is neither the achievement of worldly victory nor the acquisition of the enemy's property; rather it is the fulfillment of the duty—of universalizing the Islamic faith—*jihād* in Allāh's path. Soldiers, accordingly, were advised to refrain from shedding blood or destroying property since this was unnecessary for the achievement of their objective.

Most of the Muslim jurists are silent about military maritime law, and those few who dealt with the subject scarcely provide us with adequate materials to reconstruct a legal theory of the sea. Jurists who dealt with military issues related to the sea had to depend either on the analogy of rules governing land warfare or on the practices and usages of other nations. In the following discussion, an attempt will be made to reconstruct some of the rules and practices of naval warfare.

Maritime Warfare

After a naval battle, Muslim vessels might take the spoils of war in persons and property. The jurists agreed that the law governing the division of spoils on land was also applicable to those at sea.[1] If Muslim naval warriors found that their booty was too heavy, making their vessels likely to sink, they were permitted to throw into the sea not only the property but also their prisoners of war, including women and children.[2] But if naval warriors in great danger had on board Muslim women and children, they were not permitted to throw them into the sea, since that would amount to murder which was prohibited by the law.[3] The fact that such a contingency was

[1] Ab, Ja'far Muḥammad Ibn Jarīr al-Ṭabarī, *Kitāb al-Jihād wa-Kitāb al-Jizya wa-Aḥkām al-Muḥāribīn min Kitāb Ikhtilāf al-Fuqahā'*, ed. Joseph Shacht (Brill: Leiden, 1933), p. 82.

[2] Shaybānī, *Al-Siyar, with Sarakhsī's Commentary* (Hyderabad, 1335/1916), vol. 3, p. 269; Yūsuf Ibn Ibrāhīm al-Ardabīlī, *Al-Anwār li-A'māl al-Abrār fī Fiqh al-Imām al-Shāfi'ī* (Cairo, 19—?), vol. 2, p. 289; Shammākhī, *Al-Īḍāḥ*, vol. 3, p. 610; Qāḍī 'Iyāḍ, *Madhāhib al-Ḥukkām*, p. 235.

[3] Qarāfī, *Al-Furūq*, vol. 4, p. 11; Saḥnūn, *Al-Mudawwana*, vol. 4, p. 495; Ibn Ḥazm, *Al-Muḥallā*, vol. 7, p. 27; Shaybānī, *Al-Siyar*, vol. 3, pp. 269-270.

possible may have led some jurists, like al-Suyūṭī (849-911/1445-1505), to advise against taking women and children on board war vessels.[4] The same rule applied if the Muslims had on board *dhimmīs* or even non-Muslims under a safe-conduct [*amān*],[5] since the Muslims were under an obligation to abide by their promises.[6]

Aside from participating in holy war, naval warriors were permitted to perform commercial transactions in the realm of war [*dār al-ḥarb*]. However, personal use of Muslim war vessels to transport cargo was regarded as unlawful. In principle, if a soldier intended to transport goods on board a Muslim battleship, he needed his admiral's permission. Nonetheless, Ibn Rushd argued that the admiral is under an obligation not to permit any soldier to use battleships for personal purposes "[in order] not to cause harm to his companions and overload the ships [*mā yaḍurr bi-aṣḥābihi wa-yutʿib al-sufun*]."[7] The admiral functioned as a *caliph* at sea. Regardless of the decision of the vessel's commander, the naval warrior had to follow the command of the chief admiral; thus, he could not transfer to another war vessel or go ashore without seeking the permission of the chief admiral [*yastaʾdhin al-wālī al-ladhī ʿalā jamīʿ al-marākib, wa-lā yajraʾhu an yastaʾdhin al-wālī al-ladhī fī markabihi*].[8]

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[4] ʿAbd al-Raḥmān Ibn Abī Bakr Ibn Muḥammad al-Suyūṭī, *Al-Ashbāh wal-Naṭāʾir*, ed. al-Fiqqy (Cairo, 1938), p. 509.

[5] Schacht, *An Introduction to Islamic Law*, p. 131; Majīd Khaddūrī, *Al-Ḥarb wal-Silm fī Sharʿat al-Islām* (Beirut: Al-Dār al-Muttaḥida lil-Nashr, 1973), pp. 229-231; ʿĀlim Ibn al-ʿAlāʾ, *Al-Fatāwā al-Tatar-Khāniyya*, vol. 5, p. 275. The *amān* is a temporary safe conduct given to an enemy alien merchant (*ḥarbī*), protecting both his life and property and allowing him to carry out commercial transactions in the realm of Islam. This safe conduct, which can be granted by any Muslim, man or woman, makes the merchant a *musta'min*. His legal status resembles in general that of the *dhimmī* except that he is not obliged to pay tribute for a year. Non-Muslim merchants were as a rule granted *amān* for four months; the *amān* was subject to renewal if their business transactions were not completed during the time alloted. If the merchant wanted to stay for a minimum of one year, he had to agree to pay the poll tax, hence becoming a *dhimmī*. Such requests were ordinarily granted. As a *musta'min*, he could with perfect freedom move within the world of Islam [*dār al-Islām*] but not visit the Ḥaram or the sacred places of the Ḥijāz. It was agreed that these merchants were allowed to enter *dār al-Islām* with their personal effects and weapons, vessels, and capital assets.

[6] Shaybānī, *Al-Siyar*, vol. 3, p. 270.

[7] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 3, p. 66.

[8] Abū Dāwūd Sulaymān Ibn al-Ashʿath Ibn Isḥāq Ibn Bashīr Ibn Shaddād al-Sijistānī, *Kitāb Masāʾil al-Imām Aḥmad* (Beirut, 1934), pp. 252-253; Ibn Qudāma, *Al-Mughnī*, vol. 13, p. 41.

In the year 1100 C.E., as we learn from a Geniza letter, the Egyptian government ordered an Andalusian commercial ship anchored at the port of Alexandria to be impounded for a naval operation against the Crusaders, who had captured the coastal strip of the Levant.[9] In a state of emergency, such as wartime, a Muslim government was authorized by law to seize ships anchored at ports, regardless of whether their owners were Muslims or non-Muslims. On the other hand, the shipowner was protected by law, too. The government was under obligation to pay the shipowner an amount calculated on the basis of a daily lease. If the ship was wrecked, the (nominal) value of the ship would have to be paid to its owner. In the light of this account, al-Kindī writes:

> They must pay the shipowner in full as if they leased the ship. If it was wrecked, they would be held responsible, and its nominal value must be paid from the public treasury of Muslims [*qāla: yūfūn kirā'hā wa-in ʿaṭubat ḍamanūhā. Inna al-ḍamān ʿalayhum fī māl al-muslimīn*]. ... The charges of leasing the ships are to be paid by the public treasury of Muslims [*inna ujrat al-sufun fī māl al-muslimīn*].[10]

With the exception of certain religious restrictions and the payment of the *jizya*, the *dhimmīs* enjoyed normal and unqualified civil rights. Muslim authorities were required by law to guarantee the security of the lives, property, and religious rites of the *dhimmīs*. Nevertheless, Muslim governments were entitled to seize and use vessels owned by *dhimmīs* in a state of emergency. The government was also required to compensate the shipowner for the use of the vessel and to pay him in full if it was wrecked. The *musta'min*'s vessel was also subject to these rules. The government could seize and use the *musta'min* vessel as long as it guaranteed that it would compensate him fully in case it was wrecked.

Captives could seize both Muslim and non-Muslim vessels to escape from enemy territory—with the stipulation that the shipowners would eventually be compensated.[11] This compensation would be paid to the shipowner on the basis of a leasing contract: "they guarantee to pay the owners of the ship [*wa-yaḍmanū li-arbāb al-markab*]."[12] Moreover, jurists drew a distinction between a vessel that

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[9] Goitein, *Letters*, pp. 236-237.

[10] Kindī, *Al-Muṣannaf*, vol. 11, p. 104.

[11] *Ibid.*, vol. 18, p. 61.

[12] *Ibid.*, p. 61. This rule was also applicable to vessels owned by *dhimmīs*.

Muslim captives forcibly seized in order to escape, and one whose commander voluntarily agreed to assist Muslim prisoners of war [*fa-in ʿaṭuba al-markab fī al-baḥr, ḍaman al-nājūn lil-markab fīmā law taʿaddū ʿalā al-markab*]. In the former case, not only did the escapees have to pay sailing charges, but they also had to compensate the ship's owner if the ship were wrecked. Under the latter scenario, the escapees were only obligated to pay the sailing charges, and they did not have to compensate the shipowner if the vessel suffered damage [*ammā law lam yakun bi-taʿaddī fa-innahum lam yaḍmanū*].[13]

Rules and Practices of Naval Warfare

The Qur'ān is silent about the subject of naval warfare, though it contains instructions concerning the conduct of warfare on land. Using the technique of analogy [*qiyās*], Muslim jurists compared the role of ships in naval warfare to the role of castles in land warfare. In this way, the jurists derived several rules for Muslim commanders who sought to attack enemy warships on the high seas. For instance, just as land soldiers were permitted to catapult stones at an enemy castle, the seafaring soldiers were permitted to attack enemy warships with weapons such as "Greek Fire"[14]—whose mysterious chemical composition was said to render it inextinguishable—until the enemy crews surrendered.[15]

The Muslim jurists also debated how Muslims should react to a no-win scenario—that is, one in which defeat was certain. Should good Muslims throw themselves into the sea and face death by drowning, or should they burn to death aboard their sinking ship?

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[13] *Ibid.*, pp. 61-62.

[14] H. R. Ellis Davidson, "The Secret Weapon of Byzantium," *Byzantinische Zeitschrift* 66 (1973), 61-74; J. Haldon & M. Warwick, "A Possible Solution to the Problem of Greek Fire," *Byzantinische Zeitschrift* 70 (1977), pp. 91-92. Known to the Byzantine navy as early in the seventh century C.E., Greek Fire was used successfully against Muslim sea powers who attempted to capture Constantinople in the late seventh and the early eighth centuries C.E. Likewise, the Byzantines were able to destroy the fleet of Kiev which attacked the Byzantine capital during the tenth century C.E., owing to the extensive use of the Greek Fire. Made from crude oil, sulphur, and quicklime, it exploded on contact with water. The crude oil or a distillation of it was obtainable on the surface from a number of sources, chiefly in the Donbas area to the northeast of the Black Sea, and the area around the city of Tmutorakan.

[15] Khaddūrī, *Al-Ḥarb wal-Silm*, p. 157.

Some soldiers might prefer drowning, and others death by smoke and flame. The great majority of jurists permitted the soldiers to chose either fate. Still, some jurists prohibited sea travelers and naval warriors from opting for death by drowning. They reasoned that the enemy might rescue sailors from a burning ship, but that no adversary would attempt to save sailors from the high seas. Since a chance at life was preferable to certain death, it was therefore more appropriate to remain aboard a burning ship than to jump overboard.[16]

In land warfare, an enemy commander might deter an attack on his castle by shielding his fortress with Muslim captives. In this case, Islamic law explicitly permitted a Muslim army to attack the enemy castle.[17] Likewise, at sea, the enemy might ring the deck of his ship with Muslim captives in hopes of deterring a Muslim attack. Most jurists concluded, again on the basis of *qiyās*, that the enemy ship was not immune from attack due to the presence of Muslim captives.[18] Some jurists, however, dissented from this majority viewpoint. They advised commanders not to attack enemy ships shielded by Muslim hostages unless the enemy first opened prolonged fire on a Muslim vessel.[19]

In order to avoid unnecessary maritime campaigns, Muslim jurists enunciated rules of engagement for Muslim warships. In principle, Muslim vessels could engage enemy vessels if they were sighted approaching Islamic coastal frontiers with the clear intention of attacking and plundering maritime installations and settlements [*in thabatū fī al-baḥr ʿalā yaqīn annahum hum al-ladhīn yaghzūn al-muslimīn*]. In a state of war, Muslims on battleships were permitted to engage enemy war vessels even on the high seas far from Islamic territorial waters.[20]

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[16] Sarakhsī, *Al-Mabsūṭ*, vol. 10, pp. 76-77; Ibn al-Naḥḥās, *Mashāriʿ*, vol. 2, p. 1029; ʿĀlim Ibn al-ʿAlāʾ, *Al-Fatāwā al-Tatar-Khāniyya*, vol. 5, pp. 257-258; Ibn Qudāma, *Al-Mughnī*, vol. 13, p. 190; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 3, pp. 44-45; Abū al-Ḥussayn Aḥmad Ibn Muḥammad Ibn Aḥmad Ibn Jaʿfar Ibn Mufliḥ, *Mukhtaṣar al-Qudūrī* (Karachī, 1960), vol. 3, p. 318; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 152; Saḥnūn, *Al-Mudawwana*, vol. 2, pp. 25-26. Expressing Mālik's view, Saḥnūn writes: "Mālik said: It does not matter whether the religious warriors throw themselves into the sea or face death by enemy fire; in either case, they escape from one deadly fate to another."

[17] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 3, p. 53.

[18] Saḥnūn, *Al-Mudawwana*, vol. 2, pp. 24-25; Kindī, *Al-Muṣannaf*, vol. 11, p. 159.

[19] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 3, pp. 52-53.

[20] Kindī, *Al-Muṣannaf*, vol. 11, pp. 158-159; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 8, p. 138.

These rules were even applicable to enemy commercial ships that carried supplies, rather than troops. The Muslim attackers were required to seize the cargo and vessels rather than set them on fire. Furthermore, prior to the maritime campaign, Muslim naval warriors were supposed to ensure that no Muslim hostage was on board the enemy battleship. In the event that a Muslim defeat was inescapable and the naval warriors agreed to surrender themselves to the enemy in order to save their souls, no individual warrior would be allowed to fight the enemy [*inna al-ḥarb idhā lam yurja nafʿuhā turikat*] for the sake of the whole group .[21]

The status of enemy prisoners at sea was illustrated by Ibn Rushd. He was asked about an enemy vessel whose warriors decided to surrender after an exhaustive engagement against a Muslim warship. How should these non-Muslim mariners be treated?

> He answered: If they verbally sought *amān* (safe-conduct/pledge), they must be secured on the condition that they become either possession [*milk*] [*i.e.*, through enslavement] or *dhimmīs*. It is up to them to decide; however, it is prohibited to kill them. In the absence of any condition except for a written *amān* [*in lam yakun sharṭ ʾillā amān musajjal*], it is prohibited either to kill or enslave them. I think that they should be taken to their safe place [*ilā maʾmanihim*][22] unless they agree upon either accepting the status of *dhimmīs* by paying the poll tax [*jizya*] or converting to Islam. In the case of a written *amān*, it is necessary to respect its conditions, which include immunity from physical attack, enslavement, confiscation of their possession unless this last condition specifically stipulated otherwise.[23]

Although the *imām* alone was qualified to give an *amān*, it is obvious from this *fatwā* that captains of warships and admirals were authorized to issue a temporary *amān* at sea. This sort of pledge might also be called unofficial *amān*, but could, however, become official when the prisoners were led to Islamic territories and given the *amān* by the *imām* or his representative.[24]

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[21] Kindī, *Al-Muṣannaf*, vol. 11, pp. 159-160. Al-Kindī deals extensively with military laws on the sea. Quoting some Khārijite jurists, he states that Muslim naval warriors are allowed to engage with enemy vessels even if one of their marines declares war on Muslims.

[22] It is understood from this *fatwā* that *maʾmanihim* refers to the prison where the captives, who have recieved the *amān*, were held.

[23] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 3, p. 56.

[24] Khaddūrī, *The Law of War and Peace*, pp. 78-79. An unofficial *amān* could be given by any adult believer (Muslim), free or slave, a male or female, to an unbeliever. The *dhimmīs* were not allowed to give *amān*. A justification of Khaddūrī's

Division of Spoils [Ghanā'im]

The term *ghanīma* (spoils or booty) denotes non-Muslim property acquired by force. It encompasses not only movable and immovable properties, but also prisoners of war [*asrā*] and women and children [*sabī*]. The *ghanīma* might be divided either in the world of war [*dār al-ḥarb*] or carried to the world of Islam [*dār al-Islām*] for distribution.[25]

The crew members and navigators of Islamic fleets in the early and classical periods were mostly non-Muslims. Copts and local Greeks from the coastal towns of Syria, Lebanon, and Palestine maneuvered warships during the battle. The Geniza documents reveal that Jewish physicians were recruited to serve on Fāṭimid battleships.[26]

Given the predominantly non-Muslim ethnic makeup of the crew, and given also that each soldier who participated in naval operations deserved a portion of the spoils, the question arose whether non-Muslim combatants were entitled to share the booty with their Muslim counterparts. According to Mālik (97-179/715-795), certain crew members—helmsmen, boatswains, mercenaries, anchormen, common crew, and slaves who took part in the campaign with their masters—were not entitled to a share of the spoils; the spoils were for Muslim soldiers alone. Other jurists believed that the spoils belonged only to those combatants—Muslim and non-Muslim—who actually took part in the physical act of fighting.[27]

Yet another group of jurists insisted that anyone who witnessed a battle could claim a share of the booty, provided of course that such a witness had sympathized with the Muslim side.[28] However, the witnesses did not receive a share of the bounty equal to that of the free Muslim combatants. Since only free Muslims were entitled to a full share of the booty, bondsmen, women, and *dhimmīs* who contributed to the victory could only take a bonus share [*radkh*].[29] One

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hypothesis was given by Kindī, *Al-Muṣannaf*, vol. 11, p. 144: "Regardless of who among the Muslims grants a safe conduct to a non-Muslim and those who accompany him on board ship ... it is considered valid and is sufficient for travel in the country by that *amān* [*wa-man ammanahu aḥad min al-muslimīn, wal-ladhīna ma'hu fī al-safīna ... fa-dhālika aṣaḥ, wa-li-yaktafī bi-dhālik al-amān*]."

[25] Khaddūrī, *Al-Ḥarb wal-Silm*, pp. 164-167.

[26] Goitein, *A Mediterranean Society*, vol. I, p. 73.

[27] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 2, pp. 570-572.

[28] *Ibid.*, pp. 570-572.

[29] F. Lokkegaard, "Ghanīma," *The Encyclopaedia of Islam* vol. 2 (1991), p. 1006.

should note, however, that certain *fuqahā'* rejected this entire line of reasoning.[30]

The *fuqahā'* also debated the extent to which reinforcements ought to receive a share of the booty. In some cases, reinforcements from *dār al-Islām* might arrive only after Muslims had already secured a victory. Other reinforcements might prove unable to fight due to sickness or *force majeure*. Some *fuqahā'* recommended that such reinforcements ought nonetheless to receive a share of the spoils. The following *fatwā* exemplifies their stance:

> A group of warriors sailed for a Byzantine island. When they approached the Byzantine waters they sent a pathfinder to observe whether Islamic commercial vessels were at anchor in the island's port. When the pathfinder delayed, he discovered that his companions had already sailed into and pillaged the target. Is he entitled to acquire a share of the spoils although he did not participate in the fighting? If the pathfinder was instructed by his commander, he would be entitled to receive a share of the spoils unless he independently and voluntarily abandoned his group. Under this circumstance he would not be entitled to claim a share of the spoil. This inquiry is an obvious matter, since the pathfinder was sent by his group to explore the military preparations of the enemy. In view of the fact that the pathfinder carried out the instruction of his commander and never abandoned his group, the commander would have to allocate an appropriate amount to him since his portion was determined in his absence. Similarly, if the pathfinder was sent prior to their sailing to explore the military situation of the enemy on the condition that he would join the combat later but could not reach it until they pillaged the target, it would be incumbent upon them to assign a portion for him.[31]

A share of the spoils must be given to soldiers who, upon joining their comrades in the battlefield, discovered that the Muslims had already won a victory.[32] Likewise, if a portion of a fleet bound for *dār al-ḥarb* had to turn back due to inclement weather, the soldiers aboard the absent ships would still receive an equal share of the spoils.[33]

It was not necessary that the spoils be divided equally among the soldiers. Al-Kindī reported that: "whatever was pillaged by Muslims would belong to them. After allocating one-fifth of the spoil to the

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[30] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 2, p. 570-572; Khaddūrī, *Al-Ḥarb wal-Silm*, pp. 166-172.

[31] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 3, pp. 39-40.

[32] Ṭūsī, *Tahdhīb*, vol. 6, pp. 145-146.

[33] Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 155.

imām, the rest of it must be distributed in accordance with the agreement concluded among the troops. Distribution should be carried out as they had stipulated among themselves [*wal-bāqī baynahum ʿalā mā tashāraṭū ʿalayhi*]."[34] The military potential or rank of each soldier determined the size of his share. That is to say, well-trained and experienced soldiers and army leaders got larger shares than common troopers.[35] As this *fatwā* proves, it was not necessary that all Islamic attacks on the enemy territories be carried out with the *imām*'s consent. Individuals or organized forces initiated maritime raids on the coastal frontiers of enemy territories without previous notification of the local or provincial governor.[36]

Although the law stipulated that one-fifth of the spoils should be given to the *imām* or *sulṭān*, there were a few situations where ordinary soldiers could keep the entire booty. For example, consider the case of Muslims who, after being captured, managed to free themselves from enemy hands at *dār al-ḥarb*. These Muslims did not remit to the *sulṭān* his customary one-fifth of the spoils. By contrast, prisoners of war who overthrew their captors before reaching *dār al-ḥarb* still gave the *imām* his one-fifth.[37]

In addition, in certain situations soldiers were unequivocally required to deliver the property to its rightful owners. Where an Islamic commercial vessel was redeemed from an enemy warship, the soldiers who took part in the redemption were obligated to deliver the ship and its cargo to the real owners if their identities were discovered prior to the division of the spoil. Nonetheless, the matter remained controversial when the owners' identities were made known after the division. A group of *fuqahā'* maintained that the deliverers did not have the right to retain their shares. Moreover, seeking a remuneration for delivering a vessel was regarded as an unlawful act because such an operation "is considered as a religious duty that no one gets paid for, and because a Muslim should fight

[34] Kindī, *Al-Muṣannaf*, vol. 11, p. 163; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, pp. 152-153.

[35] Lokkegaard, "Ghanīma," pp. 1005-1006.

[36] Edmund Bosworth, "Byzantium and Syrian Frontier in the Early Abbasid Period," *Bilād al-Shām during the Abbāsīd Period 132-451/ 750-1059: Proceedings of the Fifth International Conference on the History of Bilād al-Shām* (Amman, 1412/1991), pp. 54-62; ʿAbd al-Raḥmān ʿAbd al-Ghanī, "Al-Ḥudūd al-Bīzanṭiyya al-Islāmiyya wa-Tanṭīmātuhā al-Thaghriyya 40-339/ 660-950," *Ḥawliyyāt Kulliyat al-Ādāb, Kuwait University* 11 (1410/1990), pp. 9-67.

[37] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 2, p. 603.

alongside his brother Muslim to save his soul and protect his property." A second group advocated the soldiers could keep the properties for themselves.[38]

Non-Muslim Trade with Dār al-Islām

Once foreign merchants entered *dār al-Islām* by virtue of an *amān*, they were allowed to conduct commercial transactions in any part of Islamic territories.[39] The pledge of security remained valid until the merchant arrived safely back in his homeland. Mālik was asked about Byzantine merchants who entered and carried out business in one of the Islamic port cities by virtue of an *amān*. As they returned to their native country the sea forced them into another Islamic port city. According to Mālik's opinion, "the *amān* remains valid as long as they still conduct their commercial business until they return back to their native countries [*arā lahum al-amān abadan mā dāmū fī tajrihim ḥattā yarjiʿū ilā bilādihim*]."[40] In the absence of a written safe-conduct the law empowered the *imām* or local governor to judge the status of the merchants as he saw fit [*inna wālī al-muslimīn yarā fīhim raʾyahu*]. In

[38] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 302-304; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 3, pp. 61-62, writes: "If the owner of the property and cargo was identified, they should be returned to him, otherwise they should assign one-fifth of the spoil to the *sulṭān*, and the rest should be distributed among the spoilers [*wal-bāqī yuwazzaʿ bayn al-ghānimīn*]."

[39] John Wansbrough, "The Safe-Conduct in Muslim Chancery Practice," *Bulletin of the School of Oriental and African Studies* 34 (1971), pp. 21-35. The juridical status of the non-Muslim merchant in *dār al-Islām* is well documented in the commercial treaties betweem Muslim rulers and Christian Europe. It is clear from these agreements that a distinction was made between special [*khāṣṣ*] and general [*ʿāmm*] safe-conducts. The former could be granted to one or to a restricted number of infidels by any legally competent [*mukallaf*] Muslim, defined as including slaves and women, but not minors or the insane. The latter, on the other hand, could be granted to an unlimited number, such as the inhabitants of a region, but only by the head of the community [*imām*] or his deputy [*nāʾib*], as part of a treaty [*ka-mā fī al-hudna*]. Distinction between safe-conducts for envoys and merchants is also specified: the former enjoy such *ex officio* while the latter require an explicit grant from the *imām* or his deputy. Further, the duration of the safe-conduct may not exceed one year, unlike the treaty which may run to 10 years. It should be clear that the general security of the guarantee of safe-conduct and property, included: (a) testamentary rights, freedom of worship, burial, and dress, (b) ships' repairs, emergency rations, aid against attack by corsairs, and abolition of the *lex naufragi*, and (c) permission to address complaints to the head of the Muslim community.

[40] Saḥnūn, *Al-Mudawwana*, vol. 2, p. 11; Ibn ʿAbd al-Barr, *Al-Kāfī*, vol. 1, p. 481; Ibn Naḥḥās, *Mashārīʿ*, vol. 2, p. 1056.

certain circumstances, if the foreign merchants were sighted off Islamic shores without an *amān* and halted at sea by the Muslim coast guard, they were required to sail away from *dār al-Islām*. In the event that an enemy ship was adrift along the coast and the merchants on board were without an *amān*, they were liable to be taken as booty [*fay'*]. If the *imām* found that they lacked the necessary documents, they could be taken prisoners, enslaved or killed, and their property confiscated.[41] In short, the *imām* held exclusive jurisdiction over those foreign merchants who entered *dār al-Islām* without *amān* letters, or who were found on Islamic shores as a result of shipwreck. The *imām* was given the choice of freeing the enemy alien [*ḥarbī*], ordering his immediate execution, or releasing him after payment of ransom.

The jurists showed less tolerance toward Muslim merchants who traded with *dār al-ḥarb* than toward non-Muslim merchants who traded with *dār al-Islām*. The Mālikī jurists were averse to the idea of Muslims going to *dār al-ḥarb* not only because Muslim merchants would be subject to its laws and exposed to idolatry,[42] but also owing to economic political reasons. Al-Māzarī (453-536/1061-1141) reports that around 484-486/1091-1093 (the time of the Norman invasion of Sicily), the ruler of Tunisia Tamīm Ibn al-Mu'izz (454-501/1062-1108) summoned the jurisconsult to ask their advice on the legality of the trip to Norman Sicily in order to buy supplies. In view of the difficulty of conciliating the juridical precepts with the necessity of maintaining supplies for the population, a great agitation reigned in the learned assembly and al-Māzarī was to express the opinion that the Muslims could not go to a land under the infidel's law whatever the urgency of their needs. His judgment was based on the Qur'ānic evidence (*Sūra* 9, verse 28),[43] where he considered that one had but to follow the example of the first Muslims and leave everything to Providence. And the assembly approved this interpretation of which al-Māzarī claims the paternity. The perplexity that the jurists had first shown led him to pose the problem to his venerated

[41] Mālik Ibn Anas, *Al-Muwaṭṭa'*, vol. 2, p. 451; Saḥnūn, *Al-Mudawwana*, vol. 2, p. 10; Abū al-Walīd Sulaymān Ibn Khalaf Ibn Sa'd Ibn Ayyūb al-Bājī, *Al-Muntaqā* (Beirut: Dār al-Fikr al-'Arabī, 1982), vol. 3, p. 187; Kindī, *Al-Muṣannaf*, vol. 11, p. 164.

[42] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 4, pp. 170-17.

[43] "O ye who believe! Truly the Pagans are unclean; so let them not, after this year of theirs, approach the Sacred Mosque. And if ye fear poverty, soon will Allāh enrich you, if He wills, out of His bounty, for Allāh is All Knowing, All Wise."

shaykh and *imām* ʿAbd al-Ḥamīd Ibn al-Ṣāʾigh who, although elderly and no longer issuing *fatāwā*, gave an answer similar to that of his student. Ibn al-Ṣāʾigh based himself upon a reason that al-Māzarī had not touched upon: "If we go to them, the price of the commodities will rise in their country and they will accumulate considerable sums coming from us which they will use to fight the Muslims and raid their country."[44]

A similar opinion was held by the Ḥanafī and Ẓāhirī jurists. Legally, all the jurists of Islamic law schools indicated that Muslim merchants should observe their own law in addition to the local law during their travels. If a Muslim merchant committed crimes against other Muslims, he would be liable for punishment upon his return to *dār al-Islām*.[45]

[44] Idris, "Commerce Maritime," p. 229; *idem.*, *La Berbérie Orientale*, vol. 2, p. 283.
[45] Khaddūrī, *Al-Ḥarb wal-Silm*, pp. 229-232.

CHAPTER FIVE

TERRITORIAL WATERS, THE FREEDOM OF THE SEAS AND MARITIME INTERNATIONAL LAW

How did the classical Islamic world define the legal status of the coastal waters? Did military and commercial supremacy lend absolute legal jurisdiction on the sea? Did the clearing of piracy empower the state with a legal dominion over the sea? Were embargoes and blockades recognized as a legitimate means of statecraft?

For purposes of this study, it is necessary to gain insight into the legal status of the sea from the biblical period to the emergence of Islam and its expansion into the Mediterranean world as well as the Indian Ocean. We can reach a more complete understanding of early law by considering both evidence of a legal nature and information in historical and literary sources; where definitive legal evidence is lacking, as so often proves to be the case, we can use literary and historical antecedents to complete our puzzle.

Historical Background

The early peoples of the Levant, namely, the Egyptians, the Ugarits, the Phoenicians, the Sea Peoples, and the ancient Israelites, apparently recognized the possibility of dominion over the sea. They assumed that it was quite possible to create and maintain dominion over the sea comparable to that on the land.[1] With respect to maritime activity, the Phoenician port cities Tyre and Sidon in particular seemed not only to have mastered the sea, but also to have developed their own maritime laws. In a recently discovered ancient tablet, the king of Tyre wrote to an unnamed king of Ugarit that a Ugaritic ship bound for Egypt had sunk or was severely damaged in a rainstorm. The Tyrian king went on to assure the king of Ugarit that the cargo

[1] Jonathan Ziskind, "The International Legal Status of the Sea in Antiquity," *Acta Orientalia* 35 (1973), pp. 36-37, writes: "As weakened as Egypt was at the end of the twelfth century B.C.E., Wen Amon, in the course of his difficult negotiations with the king of Byblus, said of his national god Amon: The sea is his, and the Lebanon is his." Clearly, then, the Egyptians did have a notion that the sea, like the land, could be subjected to the ownership and sovereignty of a country.

was safe.[2] This turn of phrase would seem to indicate that the Tyrian king had the concept of territorial waters in mind when he wrote to Ugarit. How far from the shore the territorial limit extended, or if there were such a limit, we cannot determine from the evidence at hand. We can see, however, that at least a portion of the sea could be considered a part of a coastal country's territory.

Concerning the Aegean Sea, it is reported that Polycrates of Samos, the king of Minos (around 1500 B.C.E), conceived the design of "gaining the empire of the sea." Minos justified his preeminent position in the Aegean on the basis of his having cleared that sea of pirates. On the other hand, certain rulers described their actions against pirates as establishing freedom of the seas, rather than state control over a given piece of territorial waters.[3]

Did those rulers in the Near East, the Levant, and ancient Greece who subscribed to Minos' viewpoint—that a state might legitimately control a particular stretch of waters—consciously conceive of their actions in terms of maritime dominion? Or did they merely exercise what we today call maritime dominion, without formally codifying it as such *de jure*? Moreover, did rival states and populations regard such attempts to secure dominion over the seas as proper and legitimate? The answer seems to be that dominion over the sea was symbolic in nature; it had no formal legal standing. That is, sovereignty was *de facto* rather than *de jure*. No evidence exists of a formal legal concept of maritime dominion, because states did not recognize a common law of nations.[4]

A turning point in the legal status of the sea occurred in classical Greece. This period witnessed the defeat of the Persian navy in the Strait of Salamis on September 23, 480 B.C.E. As a result of this glorious victory of Athens over the Persian navy the political map of the Hellenic world changed. The great contest for ascendancy between Athens and Sparta which took place on sea as well as on land inevitably raised the question of political and legal rights and power at sea.[5] The peace agreement between Athens and Sparta in 423 B.C.E., stipulated that neither the Spartans nor their allies should sail along the coasts of Greece in war vessels, and that the burden of their

[2] *Ibid.*, p. 38.

[3] Pitman Potter, *The Freedom of the Seas in History, Law, and Politics* (New York: Longmans, Green and Co., 1924), p. 16; Casson, *The Ancient Mariners*, pp. 17-21.

[4] Potter, *The Freedom of the Seas*, pp. 14-16.

[5] Casson, *The Ancient Mariners*, pp. 82, 91-92.

rowing vessels should not exceed five hundred talents, that is, somewhat over twelve tons.[6]

The Greeks were concerned almost entirely with rather limited bodies of water along the coasts of the Greek peninsula, in the bays and among the islands of the Aegean Sea. In addition, the Greeks did not clearly define maritime dominion. They did not say whether it extended over the open sea of the Mediterranean and did not explain definitely whether they meant a proprietorship *de jure* or a mere domination *de facto*.[7]

Athens' command of the sea produced a certain degree of freedom for the Greeks as a whole from Persian naval expeditions. Athens became the maritime policeman for all Greece, largely with the acquiescence of the other Greek states. The legal status of the sea during the Hellenic period can be summed up as follows: Athens for the most part maintained maritime dominion, rather than maritime liberty, and conceived of the latter only as product of the former. It did not lay down any formal rules of legal right respecting sea dominion, but regarded the latter as, in the main, a matter of military and commercial power.[8] The maritime legislation of the Greeks shows an absence of a legal doctrine as to the status of the sea.

In the Roman period, we find a more conscious and articulated recognition of the problem of maritime freedom and dominion than in the period of classical Greece. Theoretically, Roman law, as worked out by the jurists and finally embodied in the *Corpus Juris Civilis* of Justinian (527-582 C.E.), was divided into two parts. First came *res communes*, which covered public property open to every citizen. Some sources refer to *res communes* as "the law of nature." Nature provided certain gifts in abundance to all—air, running water, the sea, and in later law, the seashore to the highest winter flood—and therefore, the law permitted everyone unlimited access to these com-

[6] Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome* (London: MacMillan and Co., 1911), vol. 2, pp. 376-377.

[7] Grehard Schmidt, "Mediterranean Elements in the British Navigation Act," *Speculum* 22 (1947), p. 348; Potter, *The Freedom of the Seas*, pp. 19-20.

[8] Potter, *The Freedom of the Seas*, pp. 24-25; Casson, *The Ancient Mariners*, p. 99; Phillipson, *The International Law*, vol. 2, pp. 377-378. Phillipson shows that Athens tried to create an international legal formula concerning the status of the sea. Accordingly, he surmises that the Athenians were in favor of the freedom of the sea. Thus, in the fifth century B.C.E., Pericles, a soldier and statesman, passed a decree inviting all the Greek residents in Europe and Asia to send representatives to an assembly at Athens, to discuss not only such questions as the restoration of temples, but also those regarding unmolested maritime navigation.

mon gifts. Access to the seashore, for instance, was open to all, but no one might build on it. The use of the seashore was connected to the use of the sea; one could only erect buildings with permission of the authorities. Even when the authorities granted such permission, they did not cede ownership of the seashore itself, but only ownership of the building *per se.* Thus, if the building was ever destroyed, the land would again revert to common ownership.

Second was *res publicae*—the set of laws that covered property of the Roman state. Highways, inland rivers, and harbors all fell under the jurisdiction of *res publicae.* Every citizen could freely use harbors to navigate and fish, and to dock ships at the ports.[9] Nevertheless, these structures remained state, rather than communal, property. As such, the state enjoyed rights of exclusive jurisdiction over such structures, as detailed in *res publicae.*

As Rome herself became a maritime power and imposed her dominion on the entire sea, the Romans began to call the Mediterranean *mare nostrum*, or "our sea." Roman policy came to view the Mediterranean chiefly as a lake surrounded entirely by Roman territory. The change of the legal status of the sea came, supposedly, with the change in Rome's position in the world and growth and exercise of her sea power. As Rome swallowed up the independent states of the Mediterranean basin, she claimed maritime dominion and took control by her naval power, which she exercised freely and fully. But Rome did not obtain the consent of free states. As a result, her conquests and dominion became a matter of imperial constitutional law and practice.[10]

As with the Greeks, here too we find practically no recognition of Roman maritime dominion in the many treaties that Rome concluded with other powers. Rome held more physical power over the sea than any state in antiquity; however, it cannot be said that there existed a freely recognized maritime dominion under freely accepted international law. Roman maritime dominion was not recognized by

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[9] W. W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian*, ed. and revised by Peter Stein, 3rd edition (Cambridge: Cambridge University Press, 1963), pp. 182-183; Percy Thomas Fenn, "Justinian and the Freedom of the Sea," *The American Journal of International Law* 19 (1925), pp. 723-724; Potter, *The Freedom of the Seas*, p. 25.

[10] Peter Brown, *The World of Late Antiquity A.D. 150-750* (New York: Norton Press, 1989), pp. 150-159; Schmidt, "Mediterranean Elements in the British Navigation Act," pp. 434-349; Lewis, *Naval Power and Trade in the Mediterranean*, pp. 21-32; Casson, *The Ancient Mariners*, pp. 198-212.

law among independent states in spite of its naval supremacy and its success in suppressing piracy. The freedom of the seas was a great problem of international politics and diplomacy.[11]

In the medieval period, the political situation in Europe led to changes in the classical rules concerning the legal status of the sea. The Italian commercial city-states (Pisa and other Tuscan towns) controlled the Tyrrhenian Sea and imposed tolls upon those entering its waters. The Genoese did likewise in the Ligurian Gulf. Venice—somewhat later—acquired dominion over the Adriatic. These western Christian powers could and did maintain a continuous naval presence along the trunk routes. In the twelfth and thirteenth centuries, the Christian West dominated the trans-Mediterranean traffic. More importantly, during these centuries the Christian corsairs were able to roam freely the waters of the trunk routes of the Aegean Sea, as well as the eastern as well as the western basins of the Mediterranean Sea. It must be remembered that these pirates were licensed, aided, and abetted by political authorities, who provided facilities and received a share of the profits.[12]

The Papacy, for its part, while not securing naval control of maritime areas, put forward claims to jurisdiction over the coastal waters of Latium. The Pope claimed the right to excommunicate all pirates passing through "our sea [*mare nostrum*]," and the neighboring waters came to be referred to as "the Church's sea [*mare ecclesiae*]."[13]

France and Spain also asserted their claims to control the Mediterranean Sea. As early as the thirteenth century C.E., Louis IX (1226-1270), followed later on by Philip the Fair (1285-1314) and Pope Boniface VIII (1294-1303), forbade trade in arms with the infidels (Muslims). England acted similarly. Edward I (1272-1307) and his successor Edward II (1307-1327) attempted to prevent the Flemings from providing his Scottish and French enemies with supplies in time of war, and following the example of the Venetians and Genoese, removed contraband persons and goods from friendly vessels trading with the enemy.[14] By tracing the legal status of the seas in medieval

[11] Potter, *The Freedom of the Seas*, pp. 33-34.

[12] Schmidt, "Mediterranean Elements in the British Navigation Act," pp. 350-353; John Pryor, *Geography, Technology, and War: Studies in the Maritime History of the Mediterranean 649-1571* (Cambridge: Cambridge University Press, 1992), pp. 153-164.

[13] Potter, *The Freedom of the Seas*, p. 37.

[14] *Ibid.*, pp. 44-49. For further details on the French-English struggle and sovereignty at sea, see Fredric L. Cheyette, " The Sovereign and Pirates, 1332," *Speculum* 45 (1970), pp. 40-68.

Europe, we see European countries start making wide claims over large areas of the ocean. All these claims created the so-called *mare clausum*—in other words, new restrictions of free navigation in the open seas as well as along coast.[15]

Classical Islam

With the breakup of the Roman Empire and the emergence of Islam in the seventh century C.E., control over the sea lanes and dominion at sea were shared by the Arabs and Europeans. The Mediterranean Sea ceased to be a Roman *lake.* For a few centuries, Muslim caliphs, governors, and pirates imposed their authority over more than 60% of the seashores and controlled many of its islands. The socio-political and "religious" unity of the Mediterranean world was disrupted. Instead, the Mediterranean region in the early Middle Ages witnessed continuous struggles among Byzantium, the eastern caliphate of the ʿAbbāsids, the Frankish Kingdoms (Charlemagne), and the Umayyads of Andalusia. Later, owing to internal Islamic political turmoil, some local dynasties declared independence from the central ʿAbbāsid caliphate. The process of the political fragmentation of the Islamic Mediterranean which began in the 750s, reached its zenith by the time of the arrival of the Crusaders in the Levant in 1099 C.E.

A general survey of historical accounts, jurisprudential queries, Geniza documents, and commercial treaties concluded between Muslim and non-Muslim governments proves that Islamic law distinguished among (a) the high seas beyond the reach of any caliph or provincial governor, (b) maritime belts and zones outside these waters in which the governor had certain rights, and (c) inland waters (rivers and harbors) which fall directly under the supervision of the state.

The High Seas

As in the Graeco-Roman period, during the Middle Ages neither Christian nor Islamic maritime jurisdiction was legally recognized. The legal sovereignty of the state was restricted to its inland and adjacent (coastal) waters. Muslims and Christians could not deny

[15] R. P. Anand, "Maritime Practice in South-East Asia until 1600 A.D. and the Modern Law of the Sea," *The International and Comparative Law Quarterly* 30 part 2 (1981), p. 447.

freedom of shipping to each other. With the exception of confiscating vessels carrying military equipment to the enemy, commercial ships anchored at Islamic ports were protected by the virtue of an *amān.*[16] Transgression of the freedom of navigation by an organized naval force might have been considered a declaration of war.

In spite of the prevalent enmities among the various powers, people still moved freely around the Mediterranean.[17] The Mediterranean Sea, as reflected by the Geniza papers, was described by Goitein as a "*pontos euxeinos*, a friendly or an inviting sea."[18] With a few exceptions, political boundaries never formed an obstacle to the freedom of movement of either persons or goods. Only during wartime and political disturbance were the visits of foreigners limited in time or confined to certain localities. The Mediterranean, divided as it was between a Christian north and a Muslim south, eventually recovered much of its economic unity through the activity of merchants and traders.

According to S. D. Goitein, three positive factors made the unity of the Mediterranean world and the freedom of movement workable. First, the law was seen as personal and not territorial, *i.e.* an individual was judged according to the law of his community, or even his sect, rather than that of the territory in which he happened to be. Second, due to the bourgeois revolution of the eighth and ninth centuries a mercantile civilization was alive around the Mediterranean with merchants as its most conspicuous participants, and this trade made for free movement. And third, all the countries around the Mediterranean had a strong and long-standing tradition in common, a cultural tradition which began with the ancient civilizations.[19]

Goitein believes the Mediterranean area can be portrayed as a *free-trade community.*[20] This assumption is supported by the Muslim traveler Ibn Jubayr's statement:

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[16] Kindī, *Al-Muṣannaf*, vol. 11, pp. 159-160; Potter, *The Freedom of the Seas*, p. 37.

[17] Muslim geographers divided the Mediterranean Sea into three great regions: (a) "the East," namely, Egypt and the Muslim countries of the Levant, (b) "the Muslim West," al-Maghrib, comprising all North Africa west of Egypt, including Muslim Sicily, and Andalusia, and (c) "the Land of the Romans," *al-Rūm*, originally designating Byzantium, but used more vaguely for Christian Europe.

[18] Goitein, *A Mediterranean Society*, vol. 1, pp. 42-43.

[19] Goitein, *Studies in Islamic History*, pp. 299-301, remarks that the unity of the Mediterranean world was disrupted only when the Islamic countries were taken over by intruders from the outside, mostly from Central Asia and the Caucasus, who had no share in tradition.

[20] Goitein, *A Mediterranean Society*, vol. 1, pp. 59-66.

> The Christians impose a tax on the Muslims in their land which gives them full security; and likewise the Christian merchants pay a tax upon their goods in Muslim lands. Agreement exists between them, and there is equal treatment in all cases. The soldiers engage themselves in their war, while the people are at peace and the world goes to him who conquers.[21]

Muslim *fuqahā'* disapproved of attacking enemy commercial vessels and warships during a period of political tranquillity on the grounds that such an operation might lead to frivolous military campaigns, the loss of life, and the interruption of overseas trade. Therefore, they recommended that Muslim warriors not attack an enemy battleship unless they verified that the enemy intended to raid Muslim coastal frontiers or vessels.[22] With the exception of the incessant fighting with pirates, the principle of avoiding unnecessary maritime campaigns against organized naval forces resulted from economic factors and allowed Muslim commercial vessels to sail as far as China and the Malayan archipelago in the East, as well as the Christian countries of Europe in the West. In return, Islamic ports on the Indian Ocean, the Persian Gulf, and the Arabian, Red, and Mediterranean Seas were frequented by merchant ships from these same countries. This situation supports Goitein's thesis that "political boundaries were no obstacle for money, as long as it was good."[23]

Due to this freedom of navigation, the Indian Ocean was regarded as "a sea of peace." The World of Islam constituted more than an area of political and spiritual unification. The existence of a transcontinental trade, from China to the eastern and western Mediterranean, gave the countries of the Indian Ocean an economic unity and brought a new impetus to sea trade. The Arab achievements made it possible to unite the two arteries used since antiquity for the long distance trade between the Indian Ocean and the Mediterranean. The twin routes of the transcontinental trade from Asia—the seaborne traffic through the Red Sea and the combined sea, river, and overland journey across the Persian Gulf, 'Irāq, the Syrian desert, and Egypt—were brought under political control of a single authority, at first that of the Umayyad caliphs and later that of the 'Ab-

[21] Ibn Jubayr, *The Travels of Ibn Jubayr*, p. 301. For this text in Arabic, see Ibn Jubayr, *Riḥlat Ibn Jubayr*, p. 260.

[22] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 2, p. 554; Kindī, *Al-Muṣannaf*, vol. 11, pp. 158-159; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 8, p. 138.

[23] Goitein, *A Mediterranean Society*, vol. 1, p. 61.

bāsids. By all accounts, seaborne commerce in the Indian Ocean expanded greatly by the eleventh and twelfth centuries and reached its zenith during the fourteenth and fifteenth centuries, in spite of the Mongol advance and the appearance of the plague.[24]

With regard to Islamic sea law in the Indian Ocean, the maritime codes of Malacca, which were compiled during the reign of Maḥmūd Shāh at the end of the thirteenth century (696/1296), bring to our attention the peculiar position of a ship on the high seas, beyond the reach of any territorial jurisdiction. The ship was treated by maritime custom as a piece of quasi-territory at sea; the captain's powers on board ship were determined by its nationality. In the same manner, these codes contain interesting rules about the disciplinary powers exercised by the captain of the ship over the crew and passengers. He settled any disputes that arose and punished offenders on board. On the other hand, the pilot was charged with the steering of the vessel and with all the technical details of navigation.[25]

According to the practice in the Indian Ocean, it was against the law to seize any ship, or goods that were driven ashore by tempest or otherwise, and it was necessary to grant the shipmaster the right of repossessing the ship and its contents. Among the earliest examples of legal counteraction against these ancient laws of shipwreck was the edict of Maharaja Ganapati (thirteenth century C.E.) in which the ruler assured "safety to foreign traders by sea whose vessels might be wrecked on the coast of his territory."[26]

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[24] Hourani, *Arab Seafaring in the Indian Ocean*, pp. 51-82; Chaudhuri, *Trade and Civilisation*, pp. 44-63.

[25] Raffles, "The Maritime Code of the Malays," pp. 64-70; Winstedt & Josselin, "The Maritime Laws of Malacca," pp. 51-59; Ibn Mājid, *Al-Fawā'id*, pp. 29-30; 'Īsā al-Quṭāmī, *Dalīl al-Muḥtār fī 'Ilm al-Biḥār* (Cairo, 1950), pp. 9-10.

[26] C. H. Alexandrowicz, *An Introduction to the History of the Law of the Nations in the East Indies* (Oxford: Clarendon Press, 1967), p. 78. This custom was practiced in the Mediterranean. Although it was the exclusive authority of the *imām* to judge the fate of an enemy commercial vessel that was adrift along the Islamic coast, the merchants and their cargo aboard that vessel were to be protected if they showed letters of safe-conduct [*amān*]. Otherwise, the merchants were held in prisons, enslaved or killed, and their property was confiscated. See Mālik Ibn Anas, *Al-Muwaṭṭa'*, vol. 2, p. 451; Saḥnūn, *Al-Mudawwana*, vol. 2, pp. 10-11; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 3, pp. 60-61; Bājī, *Al-Muntaqā*, vol. 3, p. 187; Kindī, *Al-Muṣannaf*, vol. 11, p. 164; Ibn 'Abd al-Barr, *Al-Kāfī*, vol. 1, p. 481; Ibn al-Naḥḥās, *Mashāri'*, vol. 2, p. 1056; Wansbrough, "A Moroccan Amīr's Commercial Treaty with Venice of the Year 913/1508," *Bulletin of the School of Oriental and African Studies* 25 (1962), pp. 455-456, 460; *idem*, "Venice and Florence in the Mamluk Commercial Privileges," pp. 504-505, 518-519.

The arrival of the European sea powers, particularly the Portuguese in the Indian Ocean, abruptly ended the system of peaceful oceanic navigation that had been such a marked feature of the region. While prior to this penetration the merchants at sea feared only the pirates and the natural hazards of the wind and tide, they now encountered the threat of these newcomers who imported the Mediterranean style of trade and warfare, and freedom of navigation came to an end. After the arrival of the Portuguese, ships sailing on the trade routes between the Indonesian Islands and the Persian Gulf were required to obtain passes [*cartazes*][27] from the Portuguese, who patrolled the Ocean from their main strategic points in Hormuz, Goa, Ceylon, and Malacca.[28]

Arab navigators were aware of the fact that except for a limited zone offshore, no political authorities and leaders were entitled to maintain sovereignty and jurisdictional claim over the high seas. Ibn Mājid, the famous Arab pilot, addressing navigators in the Indian Ocean, the Persian Gulf, the Red Sea, and the Mediterranean Sea, stated:

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[27] Alexandrowicz, *An Introduction to the History of the Law*, pp. 71-73. A *cartaz* was a safe-conduct given by the Portuguese commissioner to ships sailing in the Indian Ocean. It was used as a means of the enforcement by a maritime power of its jurisdiction and protection relating to vessels on oceanic routes. According to Portuguese practice the procedure of issuing a ship's passport or *cartaz* by a particular maritime power started with a detailed search of the foreign ship in question. If the inquiry carried out in a harbor was satisfactory and the relevant authority came to the conclusion that the ship's intended voyage would be undertaken in good faith, a safe-conduct was granted which protected the vessel from interference on her voyage. Sailing without it meant the risk of being stopped, captured, and deprived of property, freedom, or life. The *cartaz* also served as a navicert, particularly in times of naval warfare in the Indian Ocean and the Arabian Sea.

The negotiations between the Ruler of Macassar and European companies showed that the Ruler had a general concept of *mare liberum*, *i.e.*, freedom of the seas, and claimed a right for his ships not to be interfered with on the high seas. Thus, resisting the attempts on the part of the Dutch East India Company to prohibit all trade with the Spice Islands, the Ruler of Macassar said in 1615: "God made the earth and the sea, has divided the earth among mankind and given the sea in common. It is a thing unheard of that anyone should be forbidden to sail the seas." G. J. Resink, *Indonesia's History between the Myths. Essays in Legal and Historical Theory* (Amsterdam: The Royal Tropical Institute, 1968), p. 45. A similar legal point of view seemed to have been maintained among the Israelites of the fourth century C.E. In commenting on a statue depicting Alexander the Great holding a globe in one hand and a cauldron in another, R. Yona of Tiberias (d. 305 C.E.) said that Alexander did not dominate the sea: "God alone dominates both land and sea; humanity cannot possess both." Ziskind, "The International Legal Status of the Sea in Antiquity," p. 47.

[28] Alexandrowicz, *An Introduction to the History of the Law*, p. 65.

> Know, o seeker, that every man knows his own coast best; the Chinese, China; the people of Sufāla, Sufāla; the Indians, India; the people of Ḥijāz, Ḥijāz; the Syrians, Syria; but the *sea is not peculiar to anyone of these peoples* [*wa-lākinna al-baḥr laysa huwa baḥr aḥad min hā'ulā' al-ṭawā'if*], and when you are out of sight of the coasts, you have only your own knowledge of the stars and guides to rely on.[29]

Evidently, classical Muslim skippers recognized the national maritime jurisdiction of certain states over limited bodies of offshore waters. However, it remains to be seen how classical jurisprudential and political authorities defined these limited bodies of waters off Islamic coasts.

Adjacent Waters

Classical Islam apparently defined territorial waters as reaching the distance at which the top of a vessel's masts could still be discerned from the land. Muslim authorities justified their claims to control a narrow zone of the sea on the basis of self-protection. Accordingly, the sovereignty over that zone must have been associated with the institution of the coastal defense system, *ribāṭs* (fortresses) and *miḥrāses* (watchtowers). Classical Muslim geographers and historians report that whenever enemy war vessels were sighted by the garrisons at watch-stations and towers, those prepared to fight the enemy were alerted.[30] Except for one account, classical Islamic literature is silent concerning the distance at which, when an enemy ship was sighted off Islamic shores the holy warriors at the watch-stations had to alert the local inhabitants along the coast. Al-Idrīsī (494-562/1100-1166), describing the Maghrib in 549/1154, reported that "in the village of Bajānis [in Andalusia] ... there is a stone tower in which a fire is kindled when the enemy is seen approaching by sea from a distance of six miles [*wa-ʿalayhi burj mabnī bil-ḥijāra maṣnūʿ li-waqīd al-nār fīhi ʿinda ẓuhūr al-ʿaduw fī al-baḥr sittat amyāl*]."[31] From this unique data it is reasonable to conclude that the Andalusian maritime jurisdiction extended about six miles offshore.

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[29] Ibn Mājid, *Al-Fawā'id*, p. 286.

[30] Muqaddasī, *Aḥsan al-Taqāsīm*, p. 291; Maqrīzī, *Al-Khiṭaṭ*, vol. 1, p. 324; Qalqashandī, *Ṣubḥ al-Aʿshā*, vol. 5, p. 121, *ibid*, vol.14, pp. 398-400; Lévi-Provençal (ed.), "Un nouveau texte d'histoire mérinide," pp. 30-31.

[31] Idrīsī, *Nuzhat al-Mushtāq*, vol. 2, p. 563.

Andalusians seemed to have maintained sovereignty and legal claim on limited bodies of water along the coast. Coast guards were authorized to inspect ships and interrogate crew members and passengers sailing within a distance of six miles offshore. It was a common practice that commercial vessels were escorted by coast guards before entering the harbors or when sailing in the close vicinity of Islamic shores.[32] However, as a rule, the ship's captain was required to present documentation indicating the purpose of the journey, the content of the shipment, and the personal identity and citizenship of each passenger. If the documents were lacking, the ship would be escorted into port and its crew and passengers summoned before the *imām*.[33] Likewise, the vessel had to be provided with an official endorsement before departure.[34] These rules and security measures were minutely elaborated by the Andalusian geographer al-Ḥimyarī (d. 866/1462):

> The motive behind allowing the Yemenī sailors to reside in Bajjāna was as follows: when Banū Idrīs [Idrīsid dynasty][35] became powerful in the Maghrib, the Umayyad caliphs (of Andalusia) ordered the fortification of the coasts, and that no vessel could sail at sea without a permit and supervision. No vessel could sail out of Andalusia without official documents; likewise, no-one could enter the country from the sea without identifying himself, the country he came from, and the purpose of his journey. In addition no vessel could sail off [the Andalusian] shore unless it was inspected and its crew investigated. Whenever a vessel sat in the water, its length should not exceed twelve ells, otherwise it would be put ashore unless it would follow the standard [for regulating the size of ships].[36]

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[32] Ibn al-Mujāwir, *Ṣifat Bilād al-Yaman*, vol. 1, pp. 138-140; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 5, pp. 65-66; Nājī, "Dirāsa Muqārana lil-Aḥwāl al-Tijāriyya li-Mawānī' al-Khalīj," p. 178.

[33] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 3, pp. 56, 62-63; Goitein, *Letters*, p. 339; Khaddūrī, *The Law of War and Peace*, pp. 78-79.

[34] ʿAbbās, "Ittiḥād al-Baḥriyyīn fī Bajjāna," p. 6.

[35] Idrīsids [Adārisa] were a Moroccan dynasty of descendants of ʿAlī Ibn Abī Ṭālib (fourth caliph in Islam [35-40/656-661]), founded in 172/789 by Idrīs Ibn ʿAbd Allāh, who escaped from Arabia after the battle of Fakh near Makkah in 786 C.E. In February 789 C.E., the Awraba, at that time one of the most powerful tribal groups in northern Morocco, recognized him as their *imām*. Idrīs Ibn ʿAbd Allāh, who is known as Idrīs I, was assassinated in May 791 C.E., by an agent sent by the ʿAbbāsid caliph Hārūn al-Rashīd (170-193/786-809). As a result his son Idrīs II was nominated to be the leader when he was eleven years old. He was the true founder of the Idrīsid state.

[36] Ḥimyarī, *Al-Rawḍ al-Miʿṭār*, p. 80.

Al-Ḥimyarī's description contains concrete evidence that substantiates the state's political and legal sovereignty over a limited zone at sea. Among these clues are the Andalusian adoption of the ancient custom of regulating the size of vessels sailing off Andalusia's coasts. Similar to the agreement concluded between Athens and Sparta in which Sparta was forbidden to sail along the coasts of Greece in vessels exceeding twelve tons, the Sailors' Union of Bajjāna imposed on the locals a requirement not to build vessels that "exceed twelve ells." This rule enabled the coast guards to recognize foreign vessels entering the territorial waters.

Further evidence of the Islamic jurisdictional claim over a limited zone offshore can be found in a thorough examination of international commercial treaties concluded between Islamic and foreign governments. In these documents, foreign governments recognized Islamic sovereignty over coastal waters. However, the major issue was how Muslim authorities would deal with a foreign merchant vessel in event of a shipwreck or third-party attack that occurred off Islamic shores. The sixth article of the Moroccan-Venetian commercial treaty of 913/1508 C.E. stipulates that if the sea threatens the Venetian galleys in the port of Bādis, or if an enemy pursues them, or if a Venetian ship were wrecked and its sailors required to come ashore, Morocco would grant the Venetian victims an *amān* to protect their life and property.[37]

Out of the thirty-five articles of the commercial treaty of 902/1497 concluded between the Mamlūk *sulṭān* Qāitbāy and the Republic of Florence, at least three contain references dealing with the legal status of Florentine commercial ships sailing within sight of Mamlūk coasts. These articles are concerned with providing protection and refuge to Florentine ships in case of necessity. The Mamlūk authorities, according to the twelfth article, pledge to capture and try indigenous and foreign corsairs who plunder Florentine ships sailing within the maritime domain of the Mamlūks. In case of an emergency, according to the twenty-fourth article, the envoy of the Florentine ships could seek refuge in one of the coastal fortresses, and Muslims must provide that envoy with whatever assistance is needed "for repulsion of the enemy." Likewise, Muslims must render assistance to any Florentine vessel in event of enemy attack, inclement

[37] Wansbrough, "A Moroccan Amīr's Commercial Treaty with Venice of the Year 913/1508," pp. 455-456, 460.

weather, or technical problems, and they must let the vessel enter harbor.

Finally, the thirty-first article rules that the Mamlūk coast guards must deter pirate attacks on Florentine ships approaching the harbors. If the pirates were caught, they and their victims must appear before the district *qāḍī*. Of course, the adjudication must only take place within Islamic territory. Moreover, regardless of the circumstances that forced the ship to seek refuge in Mamlūk ports, the cost and expense for providing protection or repair fell to the ship's master.[38] This condition, which is found in other articles of the treaty, might have been one of the factors explaining the difficult financial situations that prevailed in Egypt and the Levant during the late fifteenth century.

Inland Waters: Rivers and Harbors

Legally, inland waters, *i.e.* rivers and ports, were recognized as being under state jurisdiction; they were considered property of the state.[39] The government, which was in charge of regulating the navigation on rivers and in harbors, was responsible for embanking the rivers and therefore prohibited private construction within a specific distance from the riverbanks. A space of 200 to 500 ells between the banks of the river and the closest residential areas was to be kept clear of buildings.[40] Ibn ʿAbdūn reports that the local governor of a port city "has to be very vigilant against any enterprise that might have a negative effect on the port, and that the superintendent of the port is under obligation not to permit selling plots of lands in the port."[41] This evidence, however, contradicts Elʿad's and Ashtor's thesis that Muslims did not regard the ports as public property. Addi-

[38] *idem.*, "Venice and Florence in the Mamluk Commercial Privileges," pp. 501, 505-507, 514, 518-519, 521-522.

[39] Ibn ʿAbdūn, *Le Traité d'Ibn ʿAbdūn*, pp. 64-65; Suyūṭī, *Al-Ḥāwī lil-Fatāwī* (Cairo, 1352/1933), vol. 1, pp. 133-143; ʿAbd al-Fattāḥ, *Al-Mawāni' wal-Thughūr al-Miṣriyya*, pp. 103-111. Talmudic stories prove that free access to riverbanks was considered such a basic public right that when it was found obstructed by trees or other vegetation, the sages, in their capacity as community leaders, felt justified in ordering their removal even without the consent of the landowners. Patai, "Ancient Jewish Seafaring and Riverfaring Laws," p. 398.

[40] Khamīs Ibn Saʿīd al-Shiqṣī, *Manhaj al-Ṭālibīn wa-Balāgh al-Rāghibīn* (Masqaṭ, 1403/1983), vol. 13, pp. 6-7.

[41] Ibn ʿAbdūn, *Le Traité d'Ibn ʿAbdūn*, p. 60.

tionally, private citizens might own plots of land and buildings in the ports and might collect shipping taxes on behalf of the government.[42]

Ships sailing in inland rivers were sometimes exposed to attacks by bandits. The government, in cases of loss, was responsible for compensating the passengers, since the river fell under its jurisdiction. A typical inquiry concerning governmental jurisdiction over inland waters was brought by Ibn Rushd:

> Concerning a merchant who chartered a ship to transport a shipment of crops from the countryside [*rīf*]. On the way back, bandits blocked the vessel and pillaged the crops on board. Ibn al-Qāsim responded: the shipowner must present the case before the *sulṭān* in order to take the necessary measures. If he failed to bring the case to the *sulṭān*, the shipowner would be liable for compensating the shipment's owner for the same quantity of cargo. Muḥammad Ibn Rushd said: if the vessel sailed out of the *sulṭān*'s jurisdictional domain, the shipowner was liable for the safety of the shipment, otherwise the *sulṭān* was responsible for securing safe navigation within his territory [*in inṣarafa fārighan wa-taraka al-rafaʿ lil-sulṭān aw al-talawwum wal-ishhād in kāna fī mawḍiʿ lā sulṭān fīhi*].[43]

In a petition, preserved in a draft form in the Geniza, addressed to the Fāṭimid caliph al-Mustanṣir (427-487/1036-1094) concerning the murder of a young merchant and his partner on board a Nile boat, the petitioner asked the caliph to order the arrest and interrogation of the captain and sailors. This petition was apparently to be submitted by the *nagīd*, the head and the representative of the Jewish community in the royal court, on behalf of the victim's father, and addressed to the caliph's chancellery after the local authorities had neglected their duty. The petitioner writes:

> He [the victim's father] had a son, a young man twenty-six years old, who was traveling from Sirsinā in a boat, together with another merchant, also a young man twenty-six years old. They carried in their belt 500 *dīnār*s in cash and had with them merchandise to the value of 100 *dīnār*s. Their destination was the town of Fuwwa,[44] from which they

[42] El'ad, "Coastal Cities in Early Middle Ages," pp. 161-162; Eliyahu Ashtor, "Il Regime Portuario nel Califfato," in *La Navigazione Mediterranea nell'Alto Medioevo* (Spoleto: Centro Italiano di Studi sull'alto Medioevo, 1978), p. 654.

[43] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 9, pp. 63-64.

[44] The passage between Fusṭāṭ/Cairo and Alexandria was always dangerous. In a similar circumstance the Muslim chronicler ʿAbd al-Laṭīf al-Baghdādī (557-629/1162-1231) describes how Ṣaʿīdī sailors tortured and killed merchants and passengers as their river vessel made its way to the destination: "I come now to the murders and assassinations which were committed in the various provinces. There is no single route where these have not been very frequent, but it is above all in those of al-

> proposed to continue their journey to Alexandria. The captain of the boat, however, and the sailors on board treacherously murdered the said young men and took their money and merchandise. The slave of our Lord, God's blessing upon him, seeks refuge with God (*may His name be exalted*) and with the justice of the prophetic dynasty (*may God firmly establish its pillars*) and petitions for an order to be issued to the lieutenants of the Prosperous Amīr Sinān al-Dawla[45] to arrest those sailors and the captain of the boat and investigate the matter, so that the truth of the slave's account be confirmed.[46]

One should not interpret this murder on the Nile as a failure on the part of the government to secure local river traffic. On the contrary, many Geniza letters prove that travel on the river suffered from overly close supervision by the governmental authorities. When there was any claim, real or false, against a passenger, the *qāḍī*, or judge, ordered the ship to return to its point of departure, or—in the event that the boat had not yet departed—the person concerned was taken off the boat and detained until he had settled his affairs with the appropriate government office.[47] Such an act is documented in a Geniza letter sent from Solomon b. Ḥayyīm to Abū al-Faḍl Maṣliah expressing his concern about the judge's decision to order the boat back to the port of origin to settle official affairs [*wa-qīla lī inna al-markab raddahu al-qāḍī wa-ishtaghala qalbī bi-dhālik*].[48]

The legal position of the ship changed as soon as it entered the harbor. The captain's exclusive jurisdiction then gave way to a co-jurisdiction exercised by him and the *shahbandar* or *nāẓir* (port superintendent).[49] Furthermore, in a state of war, when financial support

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Fayyoum and Alexandria that the number has been greatest. They had, on the route from al-Fayyoum, the conductors of the ships who offered a passage in their ships cheaply, and when they had gone half the way, they butchered their passengers, and divided their effects. The Governor took some of these wretches and put them to the torture, and there was one who confessed under the blows that his part in these thefts, independently of those of his comrades, amounted to 6,000 *dīnārs*. See ʿAbd al-Laṭīf al-Baghdādī, *Al-Ifāda wal-Iʿtibār*, pp. 240-241.

[45] The exact function of the *amīr* Sinān al-Dawla, in whose competence lay the investigation, is uncertain. We could assume that he was the governor of the home province of the crew of the boat, or he may have functioned as the chief of the police.

[46] Stern, "Three Petitions of the Fātimid Period," pp. 172-178, doc. TS Arabic Box 42, f. 158. This document was republished by Khan, *Arabic Legal and Administrative Documents*, pp. 330-331.

[47] Goitein, *A Mediterranean Society*, vol. 1, p. 300.

[48] TS 13 J 15, f. 2, l. 11 and the margin.

[49] Alexandrowicz, *An Introduction to the History of the Law*, pp. 64-65; Anand, "Maritime Practice in South-East Asia," pp. 445-446.

was required urgently, the government could seize the ship, recruit its skippers, and confiscate its cargo. These rules were apparently applicable to Muslim and non-Muslim merchant vessels alike, including those who entered *dār al-Islām* by virtue of an *amān*. Once the state of emergency was over, the government was obligated to compensate the parties concerned in case of loss of life or cargo, or shipwreck.[50]

The government commonly seized commercial ships for military operations. The Geniza records, which shed more light on this issue than any Islamic literary and jurisprudential source, demonstrate that the Fāṭimid government frequently seized merchant vessels during the periods from the late 1040s to the 1050s and from 1099 to 1110 C.E. In 1048 C.E., the Zīrid ruler of Tunisia al-Muʿizz Ibn Bādis (406-454/1016-1062) broke with his Fāṭimid overlord al-Mustanṣir, an event that prompted the central government in Cairo to undertake maritime and overland expeditions against the Tunisian secessionists. By royal order, ships of Tunisian owners anchored within the Fāṭimid domain were seized and impressed into the Egyptian navy. As a result, goods destined for al-Maghrib were left in the ports' warehouses. A letter from Abū Naṣr Judah al-Dimashqī to Yaḥyā b. Saʿāda of Tyre required al-Dimashqī to come to Alexandria to supervise the loading of his own consignment prior to the sailing of the Maghribian vessels: "The *shaykh* Abū al-Ṭayyib Mukhtār b. Ṣadaqa has shown you evidence and told you that your shipment which is destined for the Maghrib might be delayed here (in Alexandria). Therefore, you must, by all means, hurry to me before the departure of the Maghribian vessels [verso] in order to represent yourself and to clear your goods, *God willing*."[51]

The seizure of large numbers of commercial vessels occurred most frequently on the eve of the Crusades. By 1110 C.E., the Crusaders had captured most of the Levantine port cities, and the Fāṭimid government often forced skippers and porters to empty their merchant ships for naval operations against the Crusaders. A Jewish trader intending to sail to Andalusia had to embark on another vessel because the government had impounded the ship on which he was

[50] Kindī, *Al-Muṣannaf*, vol. 11, p. 104; Khaddūrī, *The Law of War and Peace*, pp. 78-79.

[51] TS 10 J 13, f. 21: [in the margin] "*inna al-shaykh Abā al-Ṭayyib Mukhtār b. Ṣadaqa azhara ʿalayka ḥujajan wa-bayyana ʿalayka aqwālan taqtaḍī iʿāqat raḥlaka hāhunā ʿan safarihi ilā al-Maghrib wa-yanbaghī an tataḥayyala bi-kull fann wa-tubādir bil-majī' ilayya hāhunā qabla safar marākib al-Gharb [verso] li-tunīb ʿan nafsika wa-tukhalliṣ raḥlaka in shā' Allāh.*"

supposed to sail: "For when I took leave of you, I was planning to travel to Spain, but when I arrived here, I found that the Andalusian ship was completely emptied on written order of the *sulṭān*."[52]

The ship at port was at the mercy of the *nāẓir*, who ultimately held exclusive jurisdictional authority over the port area, including storehouses, vessels, and shipments. Moreover, vessels could not leave port without the official permission of the *nāẓir* [*wa-kāna lā yakhruj ... illā bi-sarāḥ*].[53] The *nāẓir* ordinarily issued such permission to embark only after approving various security measures and levying any applicable tariffs.[54]

The seizure of merchant ships for military purposes in the port apparently resulted from the lack of supplies of wood. By the late tenth and early eleventh centuries, this problem became more serious for Islamic navies. During the early Crusades, although there was still some naval-quality timber in Egypt, it was already in short supply. The most accessible lumber for shipbuilding was in the forests of the Levant and the rich resources of North African forests. When the supply from the Levant was cut off by Crusader conquests, the acquisition of maritime-quality lumber became a significant problem for the Egyptian navy. The Fāṭimids tried to buy wood from as far away as India.[55] The problem of securing adequate lumber became acute

[52] Goitein, *Letters*, pp. 236-237. TS 13 J 27, f. 9, ll. 11-13 "... *li-annī lammā kharajtu min ʿindaka wa-anā maʿwūl ilā al-Andalus famā [...] ilayya bi-tafrīgh al-markab* ... ." On a similar occasion another document (Bodl. MS Heb. c 50, f. 19) referred to an Andalusian ship that was also emptied and seized by order of the *sulṭān*: "*al-markab al-Andalusī qad taʿaṭṭal bi-kitāb min ʿinda al-sulṭān wa-furrigh jamīʿ mā fīhā*." Goitein, *A Mediterranean Society*, vol. 1, p. 59, notes that in another letter it was reported that the Genoese commercial fleet was imprisoned in Alexandria around 1103 C.E. This action, as Goitein assumes, might be connected with great Genoese exploits during the Crusaders' conquest of the Syro-Palestinian coastal cities. Bodl. MS Heb. b 3 (Cat. 2806), f. 26, ll. 13-14, "*wa-qad qabaḍa al-sulṭān, ʿazza Allāh naṣrahu, ʿalā al-Janawiyyīn wa-rubbamā qāmat nufūs al-Rūm li-ajali dhālik*"; Ben-Sasson, *Yehudei Sitzilya*, pp. 22-24, doc. TS 10 J 10, f. 14, ll. 12-14; *ibid.*, pp. 325-330, doc. TS 13 J 20, f. 19, ll. 21-24, deals with seizure of commercial vessel from Tunisia with its contents.

[53] Ḥimyarī, *Al-Rawḍ al-Miʿṭār*, p. 80.

[54] In a letter sent from Alexandria to Aden in Saladin's time, the writer expresses the apprehension that the *nāẓir* of the port would not give him permission to sail because he was regarded as suspicious for the mere reason that he had arrived on a Frankish vessel. TS 16.215 v., ll. 2-5: "*yakhshā al-nāẓir al-ladhī fī Iskandariyya laʿalla al-nāẓir ʿinda safarī yuʿīqanī li-anna kull man huwa mina al-bilād yuʿīqahu mā yukhlīhi yusāfir ṣuḥbat al-Ifrranj (...) ismī maktūb fī al-dīwān fī al-taʿrīf bil-safar.*"

[55] Fahmy, *Muslim Naval Organization*, pp. 43-147; Yaʿacov Lev, "The Fāṭimid Navy: Byzantium and the Mediterranean Sea 909-1036/297-427." *Byzantion* 54 (1984), pp. 244-246.

during Saladin's reign, when capturing lumber on the high seas became a more urgent priority than the smooth transport of knights by the Ayyūbid forces.[56]

A second reason for the seizure of merchant ships was that, with the exception of certain types of crafts, the technology and construction of commercial and military ships was similar. Commercial carriers were used to transport naval warriors and supplies, while, on the other hand, we often read in the Geniza of *ḥarbī* ships carrying merchandise from overseas.[57] This situation suggests that the navy might have substituted commercial vessels in place of warships destroyed by the enemy. However, a number of factors might prompt the government to seize merchant vessels anchored within its territories. Such factors would include the unavailability of shipbuilders, the financial situation of the state, the scarcity of raw materials, and, most importantly, the lack of time to build new ships.

Neither the Prophetic tradition nor the practice of the four early caliphs approved of the conscription of sailors. When ʿUthmān allowed Muʿāwiya to carry out a naval enterprise, he stipulated that no man be impressed for sea service; recruitment was to be on a voluntary basis.[58] Provincial governors, however, seem to be responsible for the recruitment of sailors through a form of conscription.[59]

The conscription of sailors for the navy usually took place in the towns and ports. In one Geniza document we read that merchants could not load cargo on their ships because of a labor shortage due to naval conscription.[60] Two hundred years later, in 1201, when the ruler of Tripoli, Libya, was about to invade Tunisia, he forced the sailors of all vessels anchored in his port to man Tripoli's warships.[61] The *nāẓir* of the port was authorized by his government to recruit sailors of commercial vessels for the navy regardless of their ethnic,

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[56] Ehrenkreutz, "The Place of Saladin in the Naval History," p. 110; Jarrār, "Usṭūl Ṣalāḥ al-Dīn," pp. 84-87.

[57] Udovitch, "Time, the Sea and Society," pp. 522-523.

[58] Fahmy, *Muslim Sea-Power*, p. 78.

[59] *Idem*, *Muslim Naval Organization*, pp. 98-106.

[60] Goitein, "Mikhtavim u-Mismakhim Qedumim mi-Ginzei David Kaufmann," *Tarbiẓ* 20 (1949), p. 187, doc. TS 13 J 19, f. 29, ll. 16-21: "*wal-markab lam tūsaq ʿidl illa al-nāsa ḥāʾirīn fī amr al-rijāl [i.e., sailors] al-ladhī ukhidhū ilā al-qaṭāʾiʿ [i.e., navy] asʾal al-Allāh an yusāhil ʿalayhim amrihim*"; Ben-Sasson, *Yehudei Sitzilya*, pp. 199-203.

[61] Rabbenu Moses b. Maimon, *Teshuwot ha-Rambam*, ed. Jehoshua Blau (Jerusalem, 1986), vol. 1, pp. 138-139: "Reports arrived that the ruler of the town [Tripoli] captured the sailors and transported them to al-Mahdiyya [*wa-wardat al-akhbār anna ṣāḥib al-balad akhadha baḥriyyīn al-marākib jamīʿahum saffarahum ilā al-Mahdiyya*]."

religious, or social allegiance. The conscription of skippers from merchant vessels evidently resulted from the lack of manpower. The degeneration of Muslim sea power in the Mediterranean may have discouraged many mariners from joining the navy. Consequently, the government found it necessary to conscript sailors of commercial fleets for its naval operations.

The tenth article of the commercial treaty concluded between the *amīr* of Bādis Abū ʿAlī Manṣūr and Alvise Pizamano, representative of the Doge of Venice, Leonardo Loredan, of 19 Ramaḍān 913/22 January 1508, states:

> X. Should a Christian slave from Bādis or its territory escape to the galleys they [the Venetians] shall return him to his owner. But if they carry him with them, take him to Christian territory and liberate him, then when they return in another year one of their member shall be taken, *God willing*.[62]

It is obvious that neither the Venetian merchants nor the sailors were entitled to provide assistance or intervene in the affairs of other Christian communities or individuals within the territorial jurisdiction of the *amīr*. Despite the ambiguous formulation of this article, one might surmise that Muslim authorities were entitled to capture the Venetian crew member or merchant who was directly involved in liberating or providing assistance to Christian slaves. Otherwise, the authorities were authorized to detain Venetian sailors at random.

The previous discussion has revealed that the port—together with its premises, ships, and sailors—was subject to state jurisdiction. Goods in the port warehouses and in the holds of vessels anchored in the harbor were treated in the same manner. Consignments might be confiscated in times of a civil war, a war between states, or a general financial crisis, or if the merchant was unable to pay tariffs. Sequestration of cargo in the port applied both to local citizens, to *musta'min*s, and to merchants from states uninvolved in the war.[63]

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[62] Wansbrough, "A Moroccan Amīr's Commercial Treaty with Venice of the Year 913/1508," pp. 456-457, 461: "*idhā haraba ilā al-ṭarā'id asīr naṣrāniyy min Bādis wa-ʿamilahā, fa-innahum yunazilūnahu li-ṣāḥibihi, wa-in ḥamalūhu maʿhum wa-yukhrijūhu fī arḍ al-naṣārā wa-yuṭliqūhu, fa-innahum idhā jā'ū li-ʿāmin 'ākhar yuḥbas fīhi wāḥid minhum in shā' Allāh.*"

[63] Goitein, "The Tribulations of an Overseer of the Sultan's Ships," pp. 275, 280, doc. TS 24.78, ll. 55-57: "For all I had with me was a basket of indigo and a *buhār* of lacquer and this was taken from me and sequestered"; *idem*, "Miṣhar ha-Yehudim," p. 59, doc. TS 12.291: a letter dealing with a delay in paying the customs to the government officials in the port. Dropsie 389, ll. 35-38: among other subjects, this

In brief, this discussion suggests that neither Islamic political nor religious authorities claimed legal dominion on the high seas. Political boundaries and the long-standing enmity between Muslim and non-Muslim states never constituted an obstacle to the freedom of navigation. Even during wartime, merchants of enemy countries frequented Islamic ports, and Muslim merchants traveled to ports in non-Muslim territories. Like natural hazards, piracy posed a formidable threat to commercial fleets. Clearing the sea of piracy did not empower the state with legal dominion over the sea.

Unlike the open sea, however, a defined zone of territorial waters fell under the legal jurisdiction of the state. This limited zone, as it was defined by al-Idrīsī, extended as far as six miles off Islamic shores. Neither foreign commercial carriers nor battleships were allowed to approach or sail within territorial waters without a pledge of *amān*. Otherwise, these vessels and their cargo were subject to capture and confiscation.

Similarly, harbors and inland waters—namely, rivers—were subject to full legal dominion by the state. The legal status of sailors and ships changed as they entered the port or sailed in rivers. As demonstrated by the Geniza documents, the government could impound both foreign and indigenous vessels and sailors for military service, particularly during times of war or political upheaval. Likewise, goods in warehouses and in a ship's hold were subject to confiscation.

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lengthy letter deals with the political upheaval and civil war that spread in Tunisia. The *sulṭān* of Tunisia confiscated all the merchandise belonging to the inhabitants of a town whose governor had disavowed his allegiance to him. In lines 36-38, we read: "But then the fleet of al-Mahdiyya sailed to Sfax. He had loaded on the ship six *ziqq*s of oil and five of tar and we were about to load the remainder. And the fleet arrived and the ship was seized on the very day of its setting sail and the naval units brought it to al-Mahdiyya. All that was on it was unloaded and the *sulṭān* seized it, that is, what was on it—belonging to people of Sfax and to the *qā'id* [*fa-waṣala al-usṭūl wa-akhadh al-markab yawm iqlā'ihi wa-waṣṣalathu al-qaṭā'i' lil-Mahdiyya wa-furrigh jami' mā kāna fihi wa-akhadhahu al-sulṭān ya'nī mā kāna fihi li-Ṣfaqṣiyyīn wa-lil-qā'id*]." Moshe Gil, "The Jews in Sicily under Muslim Rule in the Light of the Geniza Documents," *Italia Judaica, Atti del Convegno Internazionale* (Roma, 1983), pp. 113-125; Ben-Sasson, *Yehudei Sitzilya*, pp. 65-88.

CHAPTER SIX

DISCIPLINARY LAWS

Adjudication and Maritime Lawsuit

Apart from the principal topics associated with hiring sailors, leasing ships, jettison, collision, salvage, and military maritime laws, Islamic legal sources and the Cairo Geniza also shed light upon the personal behavior of the crew and passengers on board the vessel. These sources not only define the rights and duties of each person aboard but also provide disciplinary rules for each passenger and crew member. Muslim law doctors attempted to establish elementary rules pertaining to legal proceedings and testimony. Likewise, the issue of human values was a major concern of Muslim jurists. They discussed the measures that should be undertaken when sailors encountered people in distress at sea. The jurists expanded their legal debate to discuss cases dealing with the improper behavior of persons on board, cases such as theft, fornication, and other crimes.

Let us begin with the adjudication practiced in courts in the classical period. Where did maritime lawsuits take place when arguments transpired among the ship's co-owners, the merchants, and the lessees and lessors? Was it at the port of origin, at the destination, at the closest stopover, or elsewhere within Islamic territory? And how were the legal procedures executed when the litigants were affiliated with different Islamic law schools, or other religions? These are some of the questions that need to be addressed.

Six references are known that deal with this matter: a Geniza letter (which we have already discussed in proceeding chapters), two *fatāwā*, a diplomatic letter, and two commercial treaties. All these documents fall within the chronological range of the eleventh to fifteenth centuries C.E.

On October 30, 1030 C.E., Khallūf Ibn Zakariyyā, the agent of Joseph Ibn ʿAwkal in Alexandria, wrote to his master-merchant in Fusṭāṭ about a payment dispute which arose at the journey's end between the agent of the Tunisian vessel's owner (*wakīl al-maqrūḍ*) and the merchants. When the claim was brought before the Alexandrian *qāḍī*, who supposedly was a Shāfiʿī, he ruled in favor of the mer-

chants. As a result, the agent of the shipowner was forced to sell the vessel for three-hundred *dīnār*s. The ship's proprietor appealed to the Mālikī *qāḍī* of Qayrawān, ʿAbd al-Raḥmān Ibn Muḥammad Ibn ʿAbd Allāh Ibn Hāshim (in office 1006-1033 C.E.), in hopes of repealing the judgment of the Alexandrian *qāḍī*.[1] Unfortunately, the letter from the Cairo Geniza remains silent concerning the legal response of the Qayrawānī *qāḍī*, leaving the curious reader to wonder whether the Mālikī judge of Qayrawān concurred with the judgment of his Alexandrian colleague.

Contemporary Mālikī jurists decreed that the adjudication should take place at the destination. Abū ʿImrān al-Fāsī (d. 430/1038) issued a *fatwā* dealing with an argument between the shipowner and passengers, stating:

> A ship loaded in Alexandria traveled along with al-Mahdiyya vessels. It was taken off Jabal Barqa (Libya) by the Rūm who took it, but the Sicilian ships freed the prisoners and brought them to Sicily. Do the saviors have rights on the ship and the surviving passengers, do they deserve retribution for having saved them from the enemy? Can the issue be judged in al-Mahdiyya? [He answered]: The Muslims who freed their brothers must not be retributed, but, after the event, may be compensated by the owner of the ship. The litigation must be decided upon in the city where the boat was going, if the *amīr* has jurisdiction over it.[2]

Four centuries later the outstanding Maghribī jurisconsult al-Wansharīsī wrote:

> Concerning the location of the adjudication, if it is needed to settle errors between the passengers and the shipowner, but not among the passengers themselves, it is more appropriate to say [that the adjudication] should take place at the destination if the arbitrator at that place is fair and just.[3]

The aforementioned *fatwā* contains some points of legal significance. Primarily, once the voyage was underway, al-Wansharīsī ruled, the adjudication should be held at the destination *if the errors occurred between the lessees and lessors* and on the condition that the jurist at the

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[1] Goitein, "Mishar ha-Yehudim," p. 387, doc. TS 13 J 17, f. 11, ll. 11-14; Ben-Sasson, *Yehudei Sitzilya*, pp. 226-229.

[2] Idris, "Commerce Maritime," p. 238.

[3] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 304-305: "*wa ammā al-muḥākama, fī-mā yaḥtāj ilā al-muḥākama bayn al-rukkāb wa-ṣāḥib al-markab, lā bayn baʿḍahum baʿḍā, fa-awlā al-qawl an yakūn fī al-balad al-ladhī kān qaṣd ṣāḥib al-markab idhā kān al-wālī ʿadlan.*"

destination *was reasonably just.* The *muftī* disregarded the law school (*madhhab*) and religious allegiance of the litigants. The judgment of the Alexandrian Shāfiʿī *qāḍī*, as reflected in the eleventh-century Geniza document, was legally valid if the merchants' claim was justifiable.

The origin of this legal procedure is traceable to one of two sources: the pre-Islamic tradition which states that the lawsuit takes place at the destination, or that of the early Muslim jurists of North Africa including those of Egypt who held a similar opinion. Alternatively, had the jurist at the port of disembarkation been known as *unjust*, the lawsuit should take place elsewhere within Islamic territories. Finally, when the dispute arose among the merchants only, they had to concur with each other on locating the lawsuit to resolve their disagreements. They might appeal to the court at the destination, at the closest stopover, at the port of origin, or at a port in neutral Islamic territory.[4] This ruling might also be applicable to settling disputes arising between partners in a vessel.

In a diplomatic letter to the Doge Nicolo Trono, dated 10 Shaʿbān 877/10 January 1473, Sulṭān Qāitbāy complained about the mistreatment by Venetian sailors in one of the ports that fell within his territorial jurisdiction. The assault resulted in the capturing of a group of Muslims including one woman who was raped. The Sulṭān expressed his outrage and requested that his counterpart turn the Venetian assailants over to stand trial before a Muslim court. The fact that the incident occurred within his dominion prompted the Sulṭān to seek to try the offenders before a Muslim *qāḍī*. The diplomatic and commercial treaties between the two governments decreed that the transgressors be tried at the site of the incident. The sailors and merchants of both parties, therefore, were required to avoid the violation of local custom and laws of either country. Articles X and XII of the letter state:

> X. And we would inform him that those Franks aboard the two ships which arrived with his honorable envoy attacked a group of Muslims in the Islamic ports and took some of them prisoner. And among that which they did was to take a Muslim woman and sin with her. And our noble mind has rejected this with abhorrence for it has not been the custom of Venetians to commit an act such as this.

[4] *Ibid.*, p. 305: "They [passengers] may unload their goods at one place and hold the trial at another [... *ilā an yaḥtāj jamīʿahum al-tafrīgh bi-mawḍiʿ ākhar wal-taḥākum fī ghayrihi*]."

> XII. And let his Serenity the Doge listen to what he hears by word of mouth from us. And let his Serenity the Doge summon the Venetians who were aboard the aforesaid two ships and punish them for what they did with the Muslims and compel them to return what they took, completely and entirely, and to send this with the Muslim woman to our noble portals. And let him punish the Venetian Frank who was captured and whose release we have ordered. For it is he who dared to do this. And let him [the Doge] accept from him or from his accomplices neither excuse nor argument, and should any of them make light of it let him [the Doge] send them [the Venetian attackers] to our noble portals that we [Muslim judicial authorities] may punish them for this in our noble equity.[5]

International commercial treaties concluded between the Mamlūks and the Republic of Venice in 846/1442 and the Republic of Florence in 902/1497 contained legal conditions for settling disputes between Muslim merchants and sailors and their Venetian and Florentine counterparts. Another article dealt with piratical attacks by each party. It stipulated that Muslim corsairs and their Florentine victims be summoned for adjudication before Muslim court if the piratical raid occurred within the maritime jurisdiction of the Sulṭān. If Muslim corsairs or their Florentine counterparts attacked commercial vessels on the open sea, they should "not be held for it."[6]

Regardless of the national, religious, and law school (*madhhab*) allegiance of the litigants, all controversial matters that occurred within

[5] John Wansbrough, "A Mamluk Letter of 877/1473," *Bulletin of the School of Oriental and African Studies* 24 (1961), pp. 208, 212-213. Articles V and XXXI of the Mamlūk-Florentine commercial privileges of 902/1497 stipulate:

V. It has been mentioned among the privileges of the Venetians that when they have an adjudication, litigation or claim for money or other things, such as a Muslim against one of the Florentine Franks or a Frank against a Muslim, the adjudication should be brought before the noble presence if they are at the noble portals, or to the viceroy or chamberlain or officials of that province, and none other than the abovementioned should adjudicate between them.

XXXI. The aforesaid envoy of the Florentines has asked that when there is a corsair in harbor and their [Florentine] ships approach the harbor, knowing that he will come out to them, that the corsair be not permitted to come out; nor when they enter the harbor, and the corsair and his victims are present, that adjudication between them shall take place before the noble presence, and that one merchant be not held for another except when he is a guarantor by contract; and when the corsair on the open sea seizes a ship belonging to the Muslims they [Florentines] shall not be held for it, for a merchant is a merchant and a corsair a corsair. So let his honorable Excellency promulgate his command for the provision of the aforesaid Florentine nation in that according to the custom of the Venetians. Nor shall the interpreters take anything from them except as is the custom with the Venetians.

[6] *Idem*, "Venice and Florence in the Mamluk Commercial Privileges," pp. 499, 507, 512, 521-522.

the Islamic territories or maritime jurisdiction had to be settled and adjudicated in a Muslim court. Ibn Muyassar (d. 677/1278) reports that the *qāḍī* in a maritime city served also as *nāẓir*, or the superintendent of the port. The *qāḍī* of Ascalon, then the main port in southern Palestine, and the *qāḍī* of Alexandria also held such a double appointment in their respective port cities.[7] Similarly, the *qāḍī* of Seville, as reported by Ibn ʿAbdūn, also served as a port superintendent.[8] When disputes occurred among Muslim traders and sailors while traveling to a foreign country, they, as Ibn Baṭṭūṭa reports with regard to the Muslim community in China, had to settle matters in the presence of a Muslim *qāḍī* at that Chinese port city.[9] In the absence of a Muslim arbitrator, the litigants might have had to appeal to a Muslim court at the port of origin.

Testimony

Establishing the credibility of witnesses was a major concern of the *qāḍīs*. Legal controversy arose as to whose testimony, the lessee's or the lessor's, would be given more credence and why. The legal procedure began with a review of the stipulations of the ship-leasing contract and investigation of the circumstances of the dispute. Muslim jurists considered the lessee's testimony more credible particularly when the argument centered in financial arrangements. For instance, a ship foundered *en route* and the cargo owner claimed he had made payment of the freight fee at the port of origin, whereas the shipowner insisted that the entire fee was to be collected at the destination. Under these circumstances the lessee's statement was given more weight as long as the lessor did not substantiate his claim with tangible evidence.[10] More importantly, the ruling in favor of the les-

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[7] Muḥammad Ibn ʿAlī Ibn Yūsuf Ibn Muyassar, *Akhbār Miṣr*, ed. Henri Massé (Le Caire: Institut Français d'Archéologie Orientale, 1919), pp. 77, 91. On p. 91 he writes: "In this year 544/1149 died Abū al-Ḥasan ʿAlī Ibn al-Ḥasan of Bīsān, the father of al-Qāḍī al-Fāḍil of Cairo, who functioned as the judge and the port superintendent of ʿAscalon [*wa-fīhā [544 A.H.] māt Abū al-Ḥasan ʿAlī Ibn al-Ḥasan al-Bīsānī wālid al-Qāḍī al-Fāḍil bi-Miṣr wa-kān qāḍī ʿAsqalān wal-nāẓir fīhā*]."

[8] Ibn ʿAbdūn, *Le Traité d'Ibn ʿAbdūn*, pp. 63-65.

[9] Ibn Baṭṭūṭa, *Travels in Asia and Africa (1325-1354)*, pp. 290-291.

[10] Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, pp. 19, 37; Minhājī, *Jawāhir al-ʿUqūd*, vol. 1, p. 294; Abū al-Faḍl al-ʿĀllāmī, *ʿĀ-ini Akbarī*, vol. 1, p. 290; Ibn al-Mujāwir, *Ṣifat Bilād al-Yaman*, vol. 1, pp. 138-139; Goitein, "Mishar ha-Yehudim," p. 387, doc. TS 13 J 17, f. 11, l. 10; *idem*, *A Mediterranean Society*, vol. 1, pp. 205-206; Udovitch, "Time, the Sea and Society," pp. 529-530; Ben-Sasson, *Yehudei Sitzilya*, pp. 226-229, doc. TS 13 J 17,

see was based on the fact that Islamic law stipulates the payment of a transportation fee before a ship set sail. As a result, the shipowner's allegation that he has not received the dues would be repudiated by the justice.[11]

In the absence of written evidence, the shipowner had to summon at least two witnesses to attest to the accuracy of his claim.[12] On the other hand, if the lessees sued a shipowner and presented before the court a leasing contract signed by the shipowner, the shipowner could protect himself by taking an oath. Since the law did not allow a collective oath, the shipowner had to take an oath before every individual lessee (*wa-laysa lahu jamᶜ al-īmān fī yamīn wāḥida*).[13] The Ḥanafite jurists confirmed this legal opinion ruling that the lessee's testimony was more credible and trustworthy even if both parties of contract, the lessor and lessee, took an oath and provided the panel with proofs supporting their testimony (*wa-in aqāmā al-bayyina, kānat al-bayyina bayyinat al-rākib*).[14]

Mālikī jurists maintained four different legal views regarding testimony of passengers against the shipowner. The first opinion unequivocally approved their testifying even if the adjudication was convened at a specific location, or if the testimony was given at different court sessions (*majālis shattā*). The second point of view ruled that the passengers' testimony be indisputably rejected. To confirm the lessee's allegation, arbitrators were required to summon neutral witnesses with good reputations who were not aboard nor involved in business with the shipowner or merchants.[15] The advocates of the third opinion advised *qāḍīs* to rely upon the articles of the ship-leasing contract. The testimony of passengers could be considered as long as each one of the lessees had individually signed a leasing contract with the owner of the vessel. Conversely, if the passengers signed a collec-

f. 11, ll. 8-14. No doubt written documents were considered of great legal value especially in matters of leasing vessels, jettison, loss or damage of cargo. Presenting documentary evidence before the court was considered by the *qāḍīs* as a conclusive proof which could repudiate an oral testimony.

[11] Saḥnūn, *Al-Mudawwana*, vol. 4, p. 410; Wansharīsī, *Al-Miᶜyār*, vol. 8, p. 64; Ibn ᶜAbd al-Barr, *Al-Kāfi*, vol. 2, p. 752.

[12] Saḥnūn, *Al-Mudawwana*, vol. 4, p. 194; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 44.

[13] Wansharīsī, *Al-Miᶜyār*, vol. 10, p. 406.

[14] *Al-Fatāwā al-Hindiyya*, vol. 3, p. 362; vol. 4, pp. 476-477; vol. 5, p. 128; Awzajandī, *Fatāwā Kāzī-Khān*, vol. 2, p. 350.

[15] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 10, pp. 164-165; Burhān al-Dīn Ibrāhīm Ibn ᶜAlī Ibn Abī al-Qāsim Ibn Farḥūn, *Tabṣirat al-Ḥukkām fī Uṣūl al-Aqḍiya wa-Manāhij al-Aḥkām* (Cairo: Maktabat al-Kulliyyāt al-Azhariyya, 1986), vol. 1, p. 421.

tive leasing contract with the shipowner, their testimony would be rejected since "each person testifies for himself."[16] The fourth viewpoint, held by Ibn Rushd, justifies the testimony of the passengers regardless of the place of adjudication.[17]

Victims of Shipwreck

When the season of navigation opened, commercial ships habitually sailed in convoy, not only to protect the ships from hostile assaults, but also to provide immediate assistance to ships encountering technical problems or the possibility of foundering during the journey. Providing assistance to persons in distress or wrecked at sea was obligatory as long as the crew members of the other sailing vessel did not compromise their own safety by overloading it. The owner, captain, and crew members of a vessel sufficiently spacious to carry extra passengers would be penalized for ignoring a distress call.[18]

Islamic maritime practice in the Indian archipelago stipulates that survivors found swimming, without chance of reaching land safely, be taken aboard by the captain upon their request. He, then, would be entitled to demand the fare on his arrival at the port, and for a slave, half the amount of his value, but no more.[19] A similar rule states that if the persons who have been shipwrecked say "take us and sell us rather than allow us to perish here," and the captain takes them accordingly, he shall have only a claim to their services until the vessel reaches the port, when, if he desires to sell them, it shall be his duty to report the same to the port superintendent (*shahbandar*), in order that the magistrate may entitle the captain to half the amount of their value.[20] This practice contradicts the view of the classical Near Eastern jurists, who avow that when the ill-fated traveler was identified, the captain had no right to enslave or take possession of him.[21]

When the matter involved a life or death struggle, the law allowed the abandonment of the shipwrecked people. Assuming that a ship

[16] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 10, p. 165; Wansharīsī, *Al-Miʿyār*, vol. 8, p. 305.

[17] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 10, p. 164; Ṭāher (ed.), *Kitāb Akriyat al-Sufun*, p. 30.

[18] Kindī, *Al-Muṣannaf*, vol. 18, p. 62.

[19] Raffles, "The Maritime Code of the Malays," p. 77.

[20] *Ibid.*, p. 77.

[21] Kindī, *Al-Muṣannaf*, vol. 18, p. 62.

foundered and some of the survivors grabbed onto a piece of wreckage, they were legally entitled to repel any person intending to join them if they perceived a threat to their own lives. If such a person resisted, they would be allowed to "hit [him] on his hands" to make him abandon the wreckage.[22] This rule was also ratified by the Mālikī authorities. They claimed that if a person tried to rescue someone but realized that the rescue could endanger his life, he was permitted to abandon the attempt.[23] Lives could be sacrificed to save a larger number of souls regardless of the ethnic, religious, or social allegiance of the individuals involved.[24]

On a few occasions, a convoy of ships that encountered a shipwreck was permitted to abandon travelers in distress at high sea.[25] Again, the motive behind abandoning the ill-fated at sea was to save as many lives as possible. A careful reading of the following inquiry from Ibn Rushd's *fatāwā* collections might illuminate the rationale behind such practice:

> An inquiry about three ships which were caught in a strong gale. While *A* tied his ship to a cliff and was followed by *B*'s ship, the owner of ship *C* who did not find space to tie his ship, was forced to cast anchor and sent two seamen to tie his ship to *A*'s or *B*'s. The owners of ships *A* and *B* prevented both seamen from tying *C*'s ship claiming that such an act could endanger their own ships. Hereinafter, the owner of ship *B* agreed upon tying *C*'s ship to his own. It was not long until both ships *B* and *C* neared to foundering. As a result, the owner of *B* was forced to release *C*'s ship which ultimately foundered with its contents, passengers, and sailors on board. Are those aboard *B*'s ship responsible for the human and financial losses? Mālik answered: "Those on ship *B* had a good intention to save *C*'s vessel, but owing to the peril and fear of wreckage they released that ill-fated ship; therefore those aboard vessel *B* are absolved from penalty and indemnity." Muḥammad Ibn Rushd responded: "Those aboard *B*'s ship are exempted from penalty and liability since their intention was to save *C*'s ship for the sake of God. Though, when the danger of sinking became so imminent and unavoidable, they released *C*'s ship in order to save their lives ... ."[26]

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[22] *Ibid.*, p. 62: "*fa-in gharaq qawmun fa-ḥaṣal minhum ʿalā khashabatin wa-jā' ākhar fa-khashū minhu an akhadha al-khashaba, gharraqū[hu] in lahum ḍarb bil-qudūm idhā taraḥa yadahu ʿalayhā.*"

[23] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 16, pp. 76-77.

[24] Qarāfī, *Al-Furūq*, vol. 4, p. 11; Ibn Ḥazm, *Al-Muḥallā*, vol. 7, p. 27.

[25] Kindī, *Al-Muṣannaf*, vol. 18, p. 62: "*fa-ra'aynā anna alayhum ḍamān mā janū.*"

[26] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, pp. 447-448; Kindī, *Al-Muṣannaf*, vol. 18, p. 62. Occasionally, families of the people who drowned at sea were obligated to compensate and indemnify families of people aboard a vessel lost while attempting to

Many travel accounts, especially the stories of the captain Buzurg Ibn Shahriyār of Ramhormuz, describe the repair of a vessel while at sea or in port. Sometimes, faulty maintenance work would damage the vessel, harming the cargo, crew, and passengers. Al-Nawawī (d. 676/1277) elaborates on this matter:

> It is incumbent upon any person who damaged the bottom of a boat and caused fatal consequences and fiscal losses to indemnify the afflicted parties. If the damage was deliberately made, an act that always creates a wreckage, the culprit must be punished and pay *wergild* [blood money]. Had the culprit intentionally damaged the bottom of the boat but never caused a wreckage, it must be categorized as a semi-intentional accident. This latter incident is similar to a sailor who intended to carry out a repair but his tool pierced the hull and caused the craft to sink. If the apparatus did not affect the right place, or a ballast fell from his hand and punctured a hole, this error should fall within the category of unintentional accident.[27]

This *fatwā* contains two legal principles which add to our understanding of Islamic penal laws. First, Muslim jurists distinguished between intentional and accidental damage that resulted in fatal and fiscal losses. Second, regardless of the motivations that caused the damage the culprit in both situations was liable to indemnify for the losses and to pay *wergild* to the afflicted parties. The sole legal difference between the two categories regards the punishment. Anyone who purposely pierced the hull was to be put to death if that damage had fatal repercussions.[28] These rules also applied to maritime catastrophes that took place at the quay: "If some person deliberately or accidentally loosened the ship's hawser at the loading berth and the ship sank with its contents, he was obligated to indemnify the parties concerned for all losses."[29]

Theft

According to Islamic law, theft [*sirqa*] is punished by cutting off the hand: "As to the thief, male or female, cut off his or her hand, a

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rescue others. This was also the case when shipwrecked people stormed on board another ship causing it to sink: "*fa-raʾaynā anna ʿalayhum ḍamān mā janū.*"

[27] Nawawī, *Rawḍat al-Ṭālibīn*, vol. 7, p. 190.

[28] Ibn Qudāma, *Al-Mughnī*, vol. 12, p. 551: "He is to be put to death [*fa-ʿalayhi al-qaṣāṣ ... bi-qatlihi*]."

[29] *Ibid.*, vol. 7, p.432: "*wa-in ḥalla ribāṭ al-safīna fa-dhahabat aw ghariqat, fa-ʿalayhi qīmatuhā sawāʾ taʿaqqaba fiʿlahu aw tarākhā.*"

punishment by way of example, from Allāh for their crime ... ."[30] As a restriction imposed by God [*ḥadd Allāh*], whoever commits a theft is to be punished according to the Qur'ān. *Ḥadd*, cutting off the thief's hand, was a universal Islamic punishment. The jurists defined theft, for which the *ḥadd* punishment was prescribed, as the clandestine removal of legally recognized property in the safekeeping [*ḥirz*] of another of a definite minimum value to which the thief has no right of ownership.[31] *Ḥirz* refers to a place guarded by a watchman or protected by physical boundaries. A port then could be considered *ḥirz* since it is guarded and managed by civil authorities.

The jurists held two points of view regarding a pirated ship outside the port. The first group of jurists treated the ship in this situation like a camel whose master tied it up in an inappropriate place; they ruled, therefore, that the thief should not be punished: "*fa-lā qaṭaʿ ʿalā man saraqahā.*"[32] A second group stated that regardless of whether the ship was in a *ḥirz*, or not, the thief must be punished as required by the law: "*fa-innahu yuqṭaʿ, kāna maʿhā ṣāḥibahā aw dhahaba ʿanhā.*"[33] Nonetheless, the jurists unanimously agreed upon punishing a thief who commits theft in the *ḥirz*.[34]

When a person committed a theft on board, the ship's master, as seen in the *ḥisba* treatise of Ibn ʿAbdūn, was required to hand the thief with the stolen property over to the *qāḍī*, who in that period served as port superintendent.[35] The *qāḍī*, rather than the captain or the shipowner, carried out the punishment in the port of destination.[36]

Muslim legal authorities in the Indian archipelago established rules governing theft which differed from those of their Mediterranean counterparts. Considering the ship as a quasi-territory on ocean and its captain as the highest commander on board, maritime custom empowered him to punish any person who committed theft during the voyage.[37] These codes also distinguished between freemen and

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[30] *Qur'ān*, 5: 38.

[31] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 16, pp. 239-240; Kindī, *Al-Muṣannaf*, vol. 12, p. 141, vol. 21, p. 156; Ṭāher (ed.), *Kītāb Akriyat al-Sufun*, pp. 22-23, 43.

[32] Bājī, *Al-Muntaqā*, vol. 7, p. 177.

[33] Saḥnūn, *Al-Mudawwana*, vol. 6, pp. 290-291; Bājī, *Al-Muntaqā*, vol. 7, p. 177.

[34] Bājī, *Al-Muntaqā*, vol. 7, p. 177.

[35] Ibn ʿAbdūn, *Le Traité d'Ibn ʿAbdūn*, p. 64.

[36] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 304-305.

[37] Raffles, "The Maritime Codes of the Malays," p. 83.

slaves, and between males and females who committed thievery: "If a man who is not a slave commits a theft on board a vessel, whether the thing stolen be gold, silver, or other, he shall be punished according to the law established on the land."[38] The distinction between these social classes was procedural rather than practical. If the matter involved a slave, he was, in the first instance, to be confronted by his master; and if it appeared that the master knew of the theft and had not informed the captain, the slave's hand was to be cut off and the master fined as if "he himself had been the thief."[39]

Adultery

According to the Qur'ān, a woman and a man found guilty of adultery or fornication must each be flogged with a hundred stripes.[40] Although this divine canon seems unchangeable, regardless of whether the fornicator committed the act at sea or on land, some Islamic countries introduced laws that applied to the sea only. The laws distinguished between fornication that occurred between freemen and freewomen, freeman and female slave, and male and female slaves. The maritime code of Islamic Malaya, from the late thirteenth century C.E., established that a freeman committing adultery with a sailor's wife must be put to death. As to the wife, her husband could put her to death; if he did not wish to do so, she became the unalienable slave of the captain.[41]

Since the captain served as a judge on board, he supervised the execution of the punishment which was usually performed by the crew.[42] If a freeman committed fornication with a female slave, he had to pay a fine equal to the slave's price. But if this female slave

[38] *Ibid.*, p. 82.

[39] *Ibid.*, p. 82; Winstedt & Josselin, "The Maritime Laws of Malacca," p. 58.

[40] *Qur'ān*, 24:2; Raffles, "The Maritime Codes of the Malays," p. 82: "If the parties are not slaves and both unmarried, they shall be punished with one hundred stripes each, and afterwards obliged to marry ... and if necessary, be forced to do so, after which the woman's fault shall be forgotten." Winstedt & Josselin, "The Maritime Laws of Malacca," p. 51: "The punishment for adultery on board ship is death to both offenders. If the offenders are both unmarried, fornication is punished by a hundred lashes, and the offenders are obliged to marry. If the man is unwilling to do so, he is fined 1¼ tale of gold."

[41] Raffles, "The Maritime Codes of the Malays," p. 82; Winstedt & Josselin, "The Maritime Laws of Malacca," p. 52.

[42] Raffles, "The Maritime Codes of the Malays," p. 82.

had been so long in her master's possession that she was like his wife, the master could claim either a fine or the death penalty.[43] Lastly, if a male and female slave committed fornication, they were to be whipped in public.[44]

Criminal Law

Regarding criminal law, the Malayan sea law recognized four crimes as punishable by death on board. Disloyalty to the captain or mutiny and conspiracy to kill the captain or petty officers were both capital offences. In addition, the sea law called for death if a crew member, contrary to the custom, wore a dagger while the other members of the crew were unarmed. In this situation, the offender could be executed if the captain had clear evidence that his intention was to intimidate or wound one of the crew.[45] If, for instance, he was caught trying to commit murder, he was to be put to death without delay in order to prevent harm. If a person declared his intention of using the weapon for evil purposes, it was lawful to put such a person to death. Finally, Malayan code also made certain cases of adultery capital.[46]

The legal references remained slightly ambiguous with respect to some aspects of the judicial procedures. Since the *fuqahā'* did not explain why the adjudication had to take place at the destination when arguments arose between merchants and shipowner, they permitted the passengers to choose the location of lawsuit after consulting each other. Nonetheless, the lawyers unanimously held that if the dispute occurred within the Islamic territories or maritime jurisdiction or between Muslim passengers in the high sea, the problem had to be settled in an Islamic court.

A vessel that came across the shipwrecked victims was obliged to rescue people in distress provided it could safely carry additional passengers. In contrast with the thirteenth-century Islamic maritime codes in the Indian Ocean—where the ship-master could collect fees from such ill-fated persons when his vessel anchored in the port—

[43] *Ibid.*, p. 82; Winstedt & Josselin, "The Maritime Laws of Malacca," p. 52.

[44] Winstedt & Josselin, "The Maritime Laws of Malacca," p. 52.

[45] Ibn Mājid, *Al-Fawā'id*, p. 245: "Look thoroughly at all the passengers and the crew and assess them carefully, then you will recognize any evil in them and be prepared for it."

[46] Raffles, "The Maritime Code of the Malays," pp. 80-81; Winstedt & Josselin, "The Maritime Laws of Malacca," p. 53.

Muslim jurists of the Near East considered the rescue a religious duty; therefore, the captain had no right to collect fare, enslave the shipwrecked, or sell them in the slave market.

In essence, one might get the impression that Islamic maritime custom in the Indian archipelago distinguished between thievery, adultery, and other crimes that occurred on the sea, and those that happened on land; however, this distinction seems dubious. Regardless of whether these prohibited actions took place on land or at sea, the divine law, which is considered eternal, required the appropriate punishment of the violator. For this reason, Muslim jurists of the Islamic Mediterranean barely discussed criminal activities occurring on ships as a separate topic. In addition, the jurisdiction of shipmaster in the Islamic Indian Ocean extended beyond his counterpart in the Islamic Mediterranean. For instance, where the maritime codes and practices in the Indian archipelago empowered the shipmaster to supervise the punishment of those who behaved improperly and violated laws, Islamic maritime custom in the Mediterranean Sea ruled that the violators be summoned before Islamic judicial authorities. The reason for this can be attributed to differences in maritime habits of these countries.

CHAPTER SEVEN

RELIGIOUS TRADITIONS AT SEA

Classical Islamic jurisprudential literature contains numerous references to the religious rituals of Muslims traveling at sea. In addition to almsgiving and traveling associated with the pilgrimage to Makkah, a considerable part of the *fatāwā* collections deals at length with three major themes: prayer, transport of illicit cargo, and death aboard seagoing vessels. However, it is not clear whether these rules applied to those who earned their living at sea (*i.e.*, sailors) or only travelers. Even though these laws were an Islamic innovation *par excellence*, non-Muslim travelers aboard Islamic ships seem to have adopted some of these rules, particularly those which dealt with maritime burial and the transmission of the property of the deceased to the heirs or to his community.

The following discussion examines how sea travelers performed their religious duties on shipdeck, whether Muslim jurists applied the overland practice to sea by analogy or not, and to discover why non-Muslim sea travelers adopted Islamic maritime traditions.

Prayer and Fasting

Muslims must direct themselves toward the direction of Makkah (*qibla*) when praying even when the prayer is performed while riding an animal or on board a ship.[1] The principle is to start the prayer in the direction of the *qibla*. Yet, prayers should not be interrupted[2] even if the ship changes its course.[3] The law stipulates that it is prohibited

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[1] Ṭūsī, *Al-Nihāya*, p. 133; Ibn Ḥazm, *Al-Muḥallā*, vol. 3, p. 100; Kindī, *Al-Muṣannaf*, vol. 5, p. 392. These jurists argue that the rules governing prayer on board, whether on sea or river, are different from those applied on land: "*wal-ṣalāt fī al-safīna laysa kaghayrihā.*"

[2] Sarakhsī, *Al-Mabsūṭ*, vol. 2, p. 3; ʿĀlim Ibn al-ʿAlāʾ, *Al-Fatāwā al-Tatār-Khāniyya*, vol. 2, p. 45. The only two cases in which the worshipper is allowed to interrupt the prayer are when the ship is in peril or if he notices a person stealing his belongings.

[3] Kindī, *Al-Muṣannaf*, vol. 5, p. 391. A few scholars argue that if the ship diverts its course, the worshipper must interrupt the prayer: "*fa-aqūl inna ʿalayhum al-naqṭ.*" This requirement has been overridden by the great majority of Muslim jurists from the various Islamic law schools.

to join the congregation if the ship turns away from the *qibla*. However, an unintentional misdirection of the *qibla* does not compel the congregation to start their prayer anew.[4]

The religious law prohibits the segregation of the worshippers into groups. When the call to prayer is made, all worshippers must line up behind one prayer leader (*imām*) unless the ship contains more than a single level, in which case there must be an *imām* on each level.[5] Rising and lining up for the prayer were not obligatory for those passengers who suffered from dizziness and seasickness. Nevertheless, the *fuqahā'* emphasized that the worshippers must conduct the prayer properly if they were able to do so.[6] Regarding women on board, as during prayer on land, they must stand behind the men or be segregated from them if there is enough space on board. In any case, once the passengers board the vessel, the shipowner is obliged not to overload it and must keep enough space for conducting the prayer.[7]

Religious law dictates that a Muslim who exceeds a specific distance in traveling, that is to say, travels long enough to experience physical hardship, is allowed to shorten the prayer. The necessary distance, however, remained controversial. As with other maritime matters, this issue was analogous to the religious rules applied on

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[4] Kindī, *Al-Muṣannaf*, vol. 5, pp. 393-394.

[5] Sarakhsī, *Al-Mabsūṭ*, vol. 2, pp. 2-3; *Al-Fatāwā al-Hindiyya*, vol. 1, pp. 142-144; Ibn Qudāma, *Al-Mughnī*, vol. 3, pp. 46-47; Saḥnūn, *Al-Mudawwana*, vol. 1, pp. 82, 123; Sughdī, *Al-Nutaf*, vol. 1, p. 78, Al-Hādī Ilā al-Ḥaqq, *Al-Aḥkām*, vol. 2, p. 122; Ghazzālī, *Al-Wasīṭ*, vol. 2, pp. 578, 708-709; Shāfi'ī, *Al-Umm*, vol. 1, p. 98; Ṭūsī, *Al-Istibṣār fīmā Ukhtilifa mina al-Akhbār* (Al-Najaf: Dār al-Kutub al-Islāmiyya, 1956), vol. 1, pp. 454-455; *idem*, *Tahdhīb*, vol. 3, pp. 170-171, 295-299; *idem*, *Al-Mabsūṭ*, vol. 1, pp. 79-80; Ibn al-Barrāj, *Al-Muhadhdhab*, vol. 1, p. 87; 'Ālim Ibn al-'Alā, *Al-Fatāwā al-Tatār-khāniyya*, vol. 2, pp. 43-44; Kindī, *Al-Muṣannaf*, vol. 5, p. 391; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 4, pp. 294-296, al-Nawawī, *Al-Majmū'*, vol. 3, pp. 223-224; Ibn Ja'far, *Al-Jāmi'*, vol. 2, pp. 350-355; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 1, pp. 445-446, Ibn Rushd supports the prohibition of segregating the congregation by Qur'ānic proof (9:107). Nevertheless, some Khārijite scholars of Omān who approve performing the prayer separately without joining the congregation: "*wa-kadhālik lil-wāḥid an yuṣallī waḥdahu wa-hum yuṣallūn*": Kindī, *Al-Muṣannaf*, vol. 5, p. 391.

[6] 'Abd Allāh Ibn Ḥanbal, *Masā'il al-Imām Aḥmad Ibn Ḥanbal* (Beirut: Al-Maktab al-Islāmī, 1981) p. 68; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 2, p.159; Jār Allāh Abī al-Qāsim Maḥmūd Ibn 'Umar Zamakhsharī, *Ru'ūs al-Masā'il: al-Masā'il al-Khilāfiyya bayna al-Ḥanafiyya wal-Shāfi'iyya* (Beirut: Dār al-Bashā'ir al-Islāmiyya, 1987), p. 178; Ibn Ḥazm, *Al-Muḥallā*, vol. 3, p. 100; Kindī, *Al-Muṣannaf*, vol. 5, p. 392: "The conduct of prayer on the shipdeck is not similar to that on land since the congregation is not obliged to line up."

[7] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 1, pp. 444-445; Ibn al-Ukhuwwa, *Ma'ālim al-Qurbā*, p. 324.

land. This analogy is clearly stated by Ibn Qudāma: "If he was on a ship at sea, it is as if he were on land [*wa-idhā kān fī safīna fī al-baḥr, fa-huwa kal-barr*)."[8] The rules regarding shortening the prayer while at sea, therefore, had to correspond to those applied to prayer while traveling on land.[9] While Ḥanbalīs designated a limit of four *barīds*, equal to sixteen parasangs,[10] the Ḥanafīs ruled that a prayer could be shortened only after "a three-day journey [*thalāth marāḥil*]."[11] The Mālikīs, on the other hand, set a minimum of one maritime *barīd*,[12] and the Khārijites two parasangs, which is equal to half a *barīd*.[13] Unlike the Sunnī law schools, the Shīʿite scholars set a limit of "two *barīds*, the *barīd* equaling four parasangs, the parasang equaling three miles, and the mile equaling four thousands *dhirāʿ*."[14] Thus, the minimum distance required to shorten the prayer varied. Nonetheless, the overall picture seems to be that the minimum distance required was between two parasangs and four *barīds*.

The option of shortening the prayer was applicable only to the passengers.[15] Because sailors earned their living as such and are well adjusted physically to frequent and arduous and frequent maritime voyages (*idhā kān al-musāfir bi-baḥr al-milḥ ... wa-hiya ḥirfatihi, fal-afḍal*

[8] Ibn Qudāma, *Al-Mughnī*, vol. 3, p. 109.

[9] *Ibid.*, p. 109.

[10] Ibn Ḥanbal, *Masāʾil*, p. 117.

[11] Qudūrī, *Mukhtaṣar*, p. 52, *Al-Fatāwā al-Hindiyya*, vol. 1, p. 164.

[12] Saḥnūn, *Al-Mudawwana*, vol. 1, p.119.

[13] Rustāqī, *Manhaj al-Ṭālibīn*, vol. 4, p. 293; Ibn Jaʾfar, *Al-Jāmiʿ*, vol. 2, p. 348.

[14] Ḥillī, *Al-Sarāʾir*, vol. 1, p. 328.

The definition of these medieval Islamic distance measures is as follows:

Barīd, derived from the Latin *veredus*/ Greek *beredos* "post horse," usually applied to the official service of the Post and Intelligence in the Islamic states. In the stages of changing horses, theoretically four *farsakh*s equal one *barīd*.

Dhirāʿ, a measurement of the arm from the elbow to the tip of the middle finger, that is a cubit, and also the name given to the instrument for measuring it. *Al-dhirāʿ al-sharʿiyya* equals 49.875 cm.

Farsakh (Parasang), a Persian unit of measure of distance based on a time, from the Parthian word *frasakh* which came into Armenian as *hrasakh*, and into Syrian as *parsēhā*, that could be covered on foot in an hour, or 'marching mile". In Islam, the *farsakh-i sharʿī* was officially fixed at three Arab *mīl* ('miles'), each of 1000 *bāʿ* ('fathoms'), each of 4 canonical ells, each of 49.875 cm.; thus, the *farsakh* equals 5.985 km.

Marḥala (pl. *marāḥil*), normally the distance that a traveler can cover in one day. According to the classical Arabic geographers, the *marḥala* is equivalent to between six and seven *farāsikh*. *The Encyclopaedia of Islam* vol. 1 (1991), pp. 1045-1046; vol. 2, pp. 231-232, 812-813; vol. 6, pp. 558-559.

[15] Saḥnūn, *Al-Mudawwana*, vol. 1, p. 119; Ibn Qudāma, *Al-Mughnī*, vol. 3, pp. 118-119. Although Mālik and al-Shāfiʿī enacted that the sailors are allowed to shorten the prayer, this permission was nullified by some of their disciples and successors.

min ḥaqqihi al-itmām), they could neither shorten their prayers nor break their fast during Ramaḍān.[16] Thus, sailors and shipowners were obliged to perform the entire prayer (*aṣḥāb al-sufun yutimmūn al-ṣalāt fī sufunihim*).[17]

The distance at which the Muslim is allowed to break the fast of Ramaḍān is sixteen parasangs or a three-day journey. A group of the early *fuqahā'* determined that the range must be less than a two-day journey. As for those who practice navigation as their main source of living they are not permitted to shorten the prayer or break the fast.[18] Nevertheless, Ibn Rushd provided an exceptional ruling when he argued that the same rules applied to sailors. His argument is based on the Qur'ānic verse: "It is He who enables you to travel over land and sea ... ."[19] Thus to some degree the subject remained controversial. As for provisions for breaking the fast, they also vary. In essence, the rules of breaking the fast seem to be identical to those applied to shortening the prayer.

Pilgrimage (Ḥajj)

Classical scholars disapproved of women pilgrims traveling by sea. Such discouragement most certainly derives from two factors. First, by the eleventh and early twelfth centuries Muslim sea power began losing its dominance in the Mediterranean Sea. Naval escorts of Muslim warships were unable to protect the commercial ships from attacks by pirates and Christian navies, a situation that is well documented in classical judicial and historical sources from the eleventh to the late fifteenth centuries. However, the southern region of Andalusia was the only western Islamic territory separated by sea after the Islamic Mediterranean islands had fallen into Christian hands.

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[16] Badr al-Dīn Muḥammad Ibn Abī Bakr Ibn Sulaymān al-Bakrī, *Al-I'tinā' fī al-Farq wal-Istithnā'* (Beirut: Dār al-Kutub al-'Ilmiyya, 1991), vol. 1, p. 228; *Al-Fatāwā al-Hindiyya*, vol. 1, p. 144; Ibn Ḥanbal, *Masā'il*, p. 119; Isḥāq Ibn Ibrāhīm Ibn Hāni' al-Naysabūrī, *Masā'il al-Imām Aḥmad Ibn Ḥanbal* (Beirut: Al-Maktab al-Islāmī, 1980), vol. 1, p. 87.

[17] Ṭūsī, *Tahdhīb*, vol. 3, p. 296; Ḥillī, *Al-Sarā'ir*, vol. 1, pp. 336-341; Ibn al-Barrāj, *Al-Muhadhdhab*, vol. 1, pp. 106-109.

[18] Ibn Taymiyya, *Fatāwā*, vol. 25, pp. 209-213; Ibn Qudāma, *Al-Mughnī*, vol. 3, pp. 118-119, quotes Ibn Athram who states that a person who practices navigation as his main occupation must fulfill all the religious duties [*ammā idhā kānat al-safina baytahu fa-innahu yutimm wa-yaṣūm*].

[19] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 2, p. 319; *Qur'ān*, 10:22.

Therefore, in travel to and from Andalusia women were not discouraged from sea travel. Second, the religious ethics of Muslims discouraged the social interaction of men and women, and transporting of women on ship was viewed as unfavorable because it necessitated some degree of interaction, unless the ship contained a section for women. Ibn Rushd writes: "I dislike women sailing on the *ḥajj* ... for fear that they may reveal themselves improperly [*'awratihunn*]."[20]

Apprehension about traveling on sea was considered a sufficient reason to excuse one from fulfilling the fifth pillar of Islam. It was permitted for those who were unable to fulfill the *ḥajj* duties because of fear of sea travel to assign others to undertake the pilgrimage on their behalf; however, they would be obliged to undertake all the expenses for their proxies. In addition, the *fuqahā'* categorically prohibited pilgrims from sailing under rough conditions at sea.[21]

Almsgiving (Zakāt)

The rules of maritime *zakāt* are identical to those applied on land.[22] Whereas the amount of the *zakāt* levied on Muslims was 2.5% (one tenth of a *dīnār* per four *dīnārs* which is equal to one *dirham* per forty *dirhams*),[23] non-Muslim merchants had to pay one tenth of their earnings. This rule was disapproved of by some *fuqahā'* who proposed that foreign merchants be treated in the same manner as Muslim merchants were treated in non-Islamic countries.[24] Collecting the *zakāt* took place at the end of the *hijra* year [*ḥattā yaḥūl al-ḥawl*]. Those who were trading abroad had to pay *zakāt* for the period they were away from their native countries.[25]

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[20] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 2, pp. 434-435, Ibn al-Ukhuwwa, *Ma'ālim al-Qurbā*, p. 324, writes: "If they (shipowners) carry women they must set a partition between them and the men."

[21] Ibn Rushd, *Fatāwā*, vol. 3, pp. 1325-1327.

[22] Bisyawī, *Jāmi'*, vol. 2, p. 189; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 5, p. 70: (*wa-zakāt al-baḥr ka-zakāt al-barr lā takhtalif aḥkām al-barr wal-baḥr*). In another place al-Rustāqī affirms this ruling by saying: "*wa-min al-baḥr lam yūjab 'alayhi mina al-zakāt illā bi-mithl mā yūjab 'alayhi fī al-barr*"; Rustāqī, *Manhaj al-Ṭālibīn*, vol. 5, p. 62.

[23] Rustāqī, *Manhaj al-Ṭālibīn*, vol. 5, p. 72. This rule is applied to ship dealers. See Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 2, pp. 404-405: "He must pay [the *zakāt*] if he purchased it [the ship] for trading [*law ishtarāhā lil-tijāra la-qawwamahā*]."

[24] Rustāqī, *Manhaj al-Ṭālibīn*, vol. 5, pp. 66-67. The assumption of these *fuqahā'* is based on the Qur'ānic verse: "You should treat people in the same manner you were treated [*wa-in 'āqabtum fa-'āqibū bi-mithli mā 'ūqibtum bihi*].'

[25] *Ibid.*, pp. 60-61, Bisyawī, *Jāmi'*, vol. 2, p. 190.

Shipowners were also obliged to pay the *zakāt*. The *zakāt* could be collected if the shipowner fulfilled three conditions. First, he had to certify that forbidden goods (*muḥarramāt*) were never transported on his ship.[26] Second, the shipowner had to confirm that he did not collect fees greater than he deserved. And third, the *imām* or the tax collector must confirm that the salaries had already been paid to the sailors.[27]

Transport of Illicit Goods

Islamic law tacitly prohibits Muslim shipowners from carrying intoxicants aboard their vessels. Al-Qurṭubī (d. 672/1273) rules: "Besides cursing intoxicants, the Prophet, *God's blessing and peace be upon him*, cursed ten parties who are involved with this business: the vendor, purchaser, consumer, miller, owner, servant, drinker, deliverer, receiver, and dealers."[28] Some scholars, however, argued that Muslim shipowners do not violate Islamic law if they transport intoxicants aboard their vessels. Abū Ḥanīfa (80-150/699-767), the founder of the Ḥanafī doctrine, approved transporting shipments of alcohol on vessels owned by Muslim entrepreneurs.[29] Regardless of the religious alliance of the lessee, other jurists prohibited Muslim shipowners from transporting intoxicants on their vessels.[30]

Holding a more flexible judicial attitude, Mālikī authorities advised their jurists to investigate the circumstances that motivated a Muslim

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[26] Ṭūsī, *Al-Nihāya*, p. 369.

[27] Ibn Taymiyya, *Fatāwā*, vol. 31, p. 9.

[28] Abū ʿAbd Allāh Muḥammad Ibn Aḥmad al-Anṣārī al-Qurṭubī, *Al-Jāmiʿ li-Aḥkām al-Qurʾān* (Cairo: Dār al-Kitāb al-ʿArabī, 1967), vol 3, p. 60: "*inna al-nabiyy, ṣallā Allāh ʿalayhi wa-sallam, laʿana al-khamr wa-laʿana maʿhā ʿashra: bāʾiʿuhā, wa-mibtāʿuhā, wal-mushtarā lahu, wa-ʿāṣiruhā, wal-maʿṣūratu lahu, wa-sāqīhā, wa-shāribahā, wa-ḥāmilahā, wal-maḥmulatu lahu, wa-ākil thamanuhā.*" Concerning the divine prohibition of dealing with the intoxicant business, see Qurʾān, 5:90: "O ye who believe! intoxicants and gambling, [dedication of] stones, and [divintion by] arrows, are an abomination of Satan's handiwork; eschew such [abomination] that ye may prosper." 2:219, concerning wine (*khamr*) and gambling, He says: "In them is great sin, and some profit, for men; but the sin is greater than the profit... ."

[29] *Al-Fatāwā al-Hindiyya*, vol. 4, pp. 449: "Abū Ḥanīfa stated: A Muslim shipowner is permitted to charter his vessel to a *dhimmī* to transport alcohol [*qāla Abū Ḥanīfa: idhā istaʾjara dhimmī safīna min muslim li-yanqul ʿalayhā al-khamr jāza*]."

[30] *Ibid.*, pp. 449; Ibn ʿAbd al-Barr, *Al-Kāfī*, vol. 2, p. 756: "No Muslim shipowners are allowed to charter their vessels to those who trade in intoxicants [*wa-lā yajūz li-aḥad an yukrī safīnatahu mimman yaʿmal al-khamr*]."

shipowner to breach Islamic religious ethics. According to the Mālikī jurists, a shipowner could transport illicit cargoes if individual Christians forced him to do so. Ibn Rushd states:

> Concerning a Muslim or a Christian lessee who violated [the contract conditions] by transporting intoxicants aboard a Muslim vessel, is the shipowner entitled to collect the fee? Ibn Ḥabīb responded: If the transgressor was a Christian, the shipowner would be entitled to collect the fee and donate it for charitable purposes. If the transgressor was a Muslim, the shipowner would be allowed to charge the lessee for all shipments on board excluding the intoxicants. Muḥammad Ibn Rushd responded: If the transgressor was a Christian, the shipowner would be entitled to collect the fee for transporting intoxicants ... as if the leasing contract was signed between Christian lessee and lessor. With regard to donating the freight charges to pious foundations, he is entitled to retain the fee unless he knew [that the consignment contained alcohol] and did not deter his Christian lessee from loading it aboard. If the shipowner learned that the lessee loaded intoxicants but was powerless to prevent him, he would be required to donate for charitable purposes the extra amount collected from other shipment dues without using the intoxicant charges themselves; this situation is similar to a shipowner who was hired not to transport intoxicant. But, if the shipowner previously perceived that his lessee loaded the vessel with intoxicants but did not obstruct him, he would be required to donate the dues to pious foundations. ... Ibn Ḥabīb added: If the lessee happened to be a Muslim, the shipowner would have to charge him for the entire shipment, but not for the intoxicant ... .[31]

Whatever the case, the shipowner, if he was hired by a Christian lessee, was entitled to collect the dues of freight even if the shipment contained intoxicants. The legal flexibility of the Mālikī jurists may have resulted from the frequent contact of Muslim Andalusians with Christian traders of Spain and European countries. Once a Muslim merchant vessel anchored in a Christian harbor, it had to conform to local laws which validated the transportation of intoxicants.

Maritime Burial

One major problem that could face the sailors and the passengers on board involved death during the voyage. Burial at sea was considered an appropriate measure in order to avoid the spread of disease and possible damage to cargo due to decomposition and stench. It was a prevalent maritime practice in the Mediterranean Sea as well as the

[31] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 11, pp. 243-244.

Indian Ocean to dispose of the deceased person into the sea. Many travel accounts and Geniza letters refer to passengers, merchants, and sailors who died on the high sea and were thrown overboard.[32]

The procedure for dealing with a corpse on board was similar to that on land. The corpse had to be washed,[33] shrouded, and embalmed (*tuḥannat*). Afterward, the congregation would recite the ceremonial funeral prayer before the corpse was buried. After these procedures the corpse would be buried in the sea (*wa-yuja'l fī al-mā'*).[34]

Islamic law, however, elaborates three methods for disposing of the corpse. The first allows for disposal (by sinking) of the corpse in the sea. To insure that the corpse would not float on water, it had to be bound to a heavy object of metal or stone. This principle applied to ships that were sailing across the sea and at a distance of few days' journey from the closest Islamic country.

Alternatively, the corpse could be placed in a coffin in the hope that it would be transported by the waves to the shores of a Muslim

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[32] Ibn Jubayr, *Riḥlat Ibn Jubayr*, p. 287; Goitein, "Portrait of Medieval India Trader," p. 460, doc. TS AS 156.238, ll. 5-13: "... but the captain had a stroke and died. We threw his body overboard into the sea. So the boat remained without a commander and a ..., and we had no charts." Ben-Sasson, *Yehudei Sitzilya*, p. 162, doc. TS 20.152, l. 24: "And Simon sailed from Alexandria with the goods which are mentioned in the bond [*shetar*] heading to Sicily. He fell sick, and died, and was thrown into the sea ... [*wa-aqla' Shim'ūn min al-Iskandariyya bil-baḍā'i' al-madhkūra fī al-sheṭar yurīd Ṣiqiliyya fa-mariḍa fī al-markab wa-māta wa-rumiya fī al-baḥr* ...]."; *ibid*, p. 166, doc. Bodl. MS Heb. a 3, f. 9, l. 13; Assaf, *Meqorot u-Meḥqarim*, pp. 137-140, doc. TS 20.9, l. 7. So far I have not come across a *halachic* reference concerning maritime burial. All that the *halacha* has to say is that Jews who died abroad often expressed the wish to be buried in Palestine, and their bodies were transported in ships to a Palestinian port. When a corpse was transported on a ship, they put it in one corner of the ship, and when the time for prayers arrived they retired to another corner to recite the prayers at a distance from the source of impurity. And in the event that a death is suspected but no corpse is available, such as an accident at sea, then one should perform *k'ri'ah* as soon as a Rabbinical Court declares the person deceased. If the body is recovered at some later time, a second *k'ri'ah* should not be performed. See Aaron Felder, *Mourning and Remembrance in Halachah and Jewish Tradition* (New York, C. I. S. Publishers, 1992), p. 5; Patai, "Ancient Jewish Seafaring and River-faring Laws," p. 400.

[33] Kindī, *Al-Muṣannaf*, vol. 31, p. 85. Islamic law prohibits using water from the sea (so as to avoid salty water) to wash the corpse. If sweet water is unavailable, the corpse must be cleaned with sand or earth [*tayammum*].

[34] Sughdī, *Al-Nutaf*, vol. 1, p. 129; Kindī, *Al-Muṣannaf*, vol. 31, p. 84; Ibn Ḥanbal, *Masā'il*, p. 136. With regard to dead animals on board Nāṣīr-ī Khosraw, *Book of Travels (Safarnāma)*, p. 66: "In the town of 'Aydhāb a man whose word I trust told me that once a ship set out from that town for the Ḥijāz carrying camels for the *amīr* of Makkah. One of the camels died so it was thrown overboard."

country where the local inhabitants could bury it after conducting the appropriate rituals. If a coffin was unavailable, those on board had to follow the first method. The use of a coffin was a permissible alternative when sailing a large-sized ship which was otherwise unable to reach the shore, or when the weather conditions did not permit conducting the funeral ceremony on shore. Islamic law prohibits placing the body of a deceased Muslim in a coffin if the ship is in close vicinity only to non-Islamic countries. Regardless of whether the corpse was dropped into water or laid in a coffin, the congregation had to turn the face of the dead to the *qibla* while lowering the corpse into the sea.

The third method of maritime burial required the passengers and sailors to keep the corpse in a tight compartment until they reached their destination. Preserving the body of the dead on board depends on its corporeal condition "as long as there is no fear of decomposition [*mā lam yakhāfū 'alayhi al-fasād*]"; thus, the preservation of the corpse could last as long as decomposition could be forestalled. The average period for which the corpse could remain on board without decomposing was assessed from one to seven days.[35]

A corpse that is found on Muslim shores had to be buried by the local inhabitants. If the body was found naked, it had to be washed and shrouded. If a shroud was unavailable, the corpse's genitals could be covered with clay. Afterwards, the ceremonial funeral prayer had to be conducted and the body properly buried.[36] If a person was found in a comatose state, the body had to be kept for three days until death was verifiable.[37] In cases where the dead person's identity was unknown, the funeral ceremony and burial would have to be conducted according to Muslim rite.[38]

In addition, the *fuqahā'* felt compelled to consider the implication of burial at sea for dietary purposes. They asked: Is it lawful to eat a

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[35] Ibn Qudāma, *Al-Mughnī*, vol. 3, p. 431; Ibn Juzayy, *Al-Qawānīn al-Fiqhiyya*, p. 101; Nawawī, *Al-Majmū'*, vol. 5, pp. 247-248; *idem*, *Rawḍat al-Ṭālibīn*, vol. 1, pp. 659-660; Shammākhī, *Al-Īḍāḥ*, vol. 1, p. 767; Ibn al-Hummām, *Sharḥ*, vol. 2, p. 141; Muḥaqqiq al-Thānī, *Jāmi' al-Maqāṣid*, vol. 1, p. 447; Kindī, *Al-Muṣannaf*, vol. 31, pp. 85-88; Faḍl Ibn al-Ḥasan al-Ṭabarsī, *Al-Mu'talaf mina al-Mukhtalaf bayna A'immat al-Salaf* (Mashhad, 1989), vol. 1, pp. 251-252; Ṭūsī, *Al-Mabsūṭ*, vol. 1, p. 181; *idem*, *Al-Istibṣār*, vol. 1, pp. 215-216; Ibn Mufliḥ, *Al-Mubdi'*, vol. 2, pp. 237-238.

[36] Ṭūsī, *Tahdhīb*, vol. 3, p. 179; Khawansārī, *Jāmi' al-Madārik*, vol. 1, pp. 568-569.

[37] Ṭūsī, *Al-Mabsūṭ*, vol. 1, p. 180; Muḥaqqiq al-Thānī, *Jāmi' al-Maqāṣid*, vol. 1, p. 378; Ibn Ḥanbal, *Masā'il*, p. 135.

[38] Naysabūrī, *Masā'il*, vol. 1, p. 183.

fish that nourished itself from a corpse? And, how does one know what fish has consumed a corpse or not? The Prophetic tradition says: "a [sea] whose waters are pure, its dead animals are lawful to eat [*huwa al-ṭahūru mā'uhu, al-ḥallu maytatahu*]." This statement permits Muslims to eat any marine creature living in water, with the exception of amphibious animals which give birth on land. Although this rule applies to all marine animals that spend their entire lives exclusively in water, the *fuqahā'* noted one circumstance that forbids the eating these animals. With regard to a marine animal in which human flesh was discovered, al-Kindī writes: "It is agreed upon unanimously [by all scholars] that it is lawful to eat a fish even if a dead or live fish is discovered in its digestive system. Conversely, it is forbidden to eat a fish if [human] flesh was discovered in its digestive system."[39] The distinction between lawful and forbidden marine animals could thus only be made by the person who cleans and cooks them.

Bequests

Whether a person died at sea or on land, his inheritance had to be apportioned as required by the Qur'ān.[40] The regulations of inheritance were largely maintained from the pre-Islamic era. In keeping with the patriarchal system prevailing among the Arabs, the estate of

[39] Kindī, *Al-Muṣannaf*, vol. 9, p. 207: "*wal-samakata idhā wujida fīhā samakun jā'izun akluhā, ḥayyatun kānat aw ghayru ḥayyatin bi-ittifāq. Fa-in wujida fī baṭnihā qiṭ'atu laḥmin, lam yajuz akluhā.*"

[40] *Qur'ān*, 4:11-12: "(11) Allāh ordains for you, concerning your children, [as follows]: for the male the like of the portion of two females; but if there are [only] females [and] more than two, two-thirds of the estate belongs to them and if there is [but] one [female] to her belongs the half. And the parents shall each have a sixth of the estate if [the deceased] has children, and if he has no children and [only] his parents inherit from him, his mother shall have a third. But if he has brothers, his mother shall have a sixth. [All this] after deducting a bequest he may have made or a debt. Ye know not whether your parents or your children be nearest to you in usefulness. [This is] an ordinance of Allāh, and Allāh is knowing and wise. (12) To you belongs half of the estate of your wives, if they have no children; but if you have children a fourth of their estate belongs to you—after deducting a bequest they may have made or a debt. To them belongs a fourth of your estate, if you have no children; but if you have children an eighth of your estate belongs to them—after deducting a bequest you may have made or a debt. If a man or a woman leaves an estate without having a direct heir [i.e., son or father], but has a brother or a sister, each shall have a sixth; but if there are more than that, they shall share a third after deducting a bequest he may have made or a debt, without prejudice. [This is] an ordinance of Allāh and Allāh is knowing and gracious."

a deceased tribesman went *ab intestato* to the nearest male relative(s); the order of succession in which these relatives, the so-called *ʿaṣaba* (corresponding to *agnati*) were called upon to inherit survives and is systematized in Muslim law. However, minors—being incapable of bearing arms—female relatives, and widows were excluded from succession. The customary regulations of inheritance were modified during the Islamic era. Female relatives were to receive half the share of male relatives of the same degree.[41]

The legacy was to be formulated and implemented as required by the law; however, as the testator completed the basic articles, *i.e.*, detailing the volume of the transferred capital assets and properties, and indicating the names of inheritors, he had to conclude his will by stating, "if I die during my journey [*idhā ḥadath bī mawt min safarī hādhā*]."[42] Thus, the inheritance could not be transferred to the heirs as long as the testator's death was not verified. Once the testator returned from the journey, he either had the right to nullify or validate the testament, "if he did not die during his journey, he was allowed to nullify it [*fa-in lam yamut min dhālik fa-lahu al-rajʿa*]."[43] Accordingly, the testament remained valid as long as the testator never invalidated it [*fal-waṣiyya thābita ḥattā yarjiʿ minhā*].[44]

The time of writing the will could play an essential role in validating or nullifying the legacy. The Mālikī *fuqahāʾ*, who held two viewpoints, reported that regardless of the circumstances in which the testator made the will, a written legacy should remain valid. Quoting Mālik Ibn Anas, Saḥnūn states: "Mālik was asked about a shipowner who was told that his ship sank *en route*. Later on, he became seriously ill and determined by a will that one-third of his possessions were to be transferred to his inheritors. After he died the ship returned safely to the port of origin. Does the legacy remain valid? He answered: Yes."[45] The second viewpoint, advocated by Ibn Rushd, refuted Mālik's legal opinion and pointed out that a legacy that was written under such pressure and desperate conditions [*ḥattā kān al-ghālib*

[41] Joseph Shacht, "Mīrāṯ," *The Encyclopaedia of Islam* vol. 7 (1993), p. 106; Ṭūsī, *Al-Nihāya*, vol. 3, pp. 253-259; *idem*, *Tahdhīb*, vol. 9, pp. 359-363; *idem*, *Al-Mabsūṭ*, vol. 4, pp. 118-119; Nawawī, *Al-Majmūʿ*, vol. 15, pp. 223-225; Abū Jaʿfar Muḥammad Ibn ʿAlī al-Mashhadī, *Al-Wasīla ilā Nayl al-Faḍīla* (Qumm, 1987), pp. 400-401; Ibn ʿAbd al-Barr, *Al-Kāfī*, pp. 1036-1042; Ibn Mufliḥ, *Al-Mubdiʿ*, vol. 6, pp. 227-230.

[42] Kindī, *Al-Muṣannaf*, vol. 27, p. 150.

[43] Ibn ʿAbd al-Barr, *Al-Kāfī*, vol. 2, p. 1036.

[44] Kindī, *Al-Muṣannaf*, vol. 27, p. 150.

[45] Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 13, p. 5.

ʿalayhi al-yaʾs minhā] would be regarded as illegitimate even if it was confirmed that the ship was genuinely wrecked [*ḥattā idhā taḥaqqaqa ʿindahu halākuhā*].[46]

Two different customs of handling inheritance at sea prevailed in the medieval Mediterranean world, *i.e.*, Christian and Islamic. The Christian maritime tradition, as reflected in the *Consulate of the Sea of Catalonia*, allowed the captain to take over the possessions of the deceased on board, regardless of his religious and ethnic identity.[47] Ibn Jubayr, the famous Andalusian traveler and *qāḍī*, describing a voyage on a Genoese vessel from Acre to Sicily, states:

> Throughout all these days we had seen no land—*may God soon dispel our cares*—and two Muslims died—*may God have mercy on them.* They were thrown into the sea. Of the [Christian] pilgrims two died also, and were followed thereafter by many others. One of them fell alive into the sea, and the waves carried him off more quickly than a flash of lightning. The captain of the ship inherited the effects of the departed Muslims and Christian pilgrims, for such is their usage for all who die at sea. There is no way for the [true] heir of the dead to gain his inheritance, and at this we were much astonished.[48]

Contrary to the Christian practice, Muslim shipowners and captains were required to hand the possessions of the deceased person over to the local civil and religious authority, *i.e.*, the *qāḍī*, at the first stopover or at the port of discharge. The duty of the *qāḍī* was to assign a trustworthy commissioner [*wakīl*] to be responsible for storing and delivering the property to the deceased's relatives.[49] Had the deceased person been a *dhimmī*, his belongings had to be delivered to the religious authority he was affiliated with. This was the case in 1058, when an Egyptian Jewish merchant entrusted a business friend

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[46] *Ibid.*, pp. 5-6, 116.

[47] Jados, *Consulate of the Sea*, pp. 66-68. Legal Code no. 118 of the Consulate rules: "In the situation described above, the master of the vessel shall receive as part of his compensation or wages the bed and one suit of clothing of the deceased person, that is, after the navigator has received one suit of clothing. If the person who died aboard the vessel did not leave many possessions, the master of the vessel should not even receive that much. If the property of the deceased party amounts to less than one hundred *besant*, the (captain) patron should take only the clothing and turn all other effects of the deceased into cash by selling it." Similarly, Code no. 121 establishes that "any provisions left by a passenger or any other person dying aboard the vessel will be taken over by the patron of the vessel."

[48] Ibn Jubayr, *Riḥlat Ibn Jubayr*, p. 287: "*li-annahā sunna ʿindahum fī kulli man yamūt fī al-baḥr wa-lā sabīl li-wārith al-mayyit ilā mīrāthihi.*"

[49] Wansharīsī, *Al-Miʿyār*, vol. 8, pp. 304-305.

returning to his native Sicily with a large consignment of spices, drugs, and other goods. The agent died on the high sea, and the ship arrived in Tripoli, Libya, instead of Sicily. The captain handed the shipment of the deceased over to the Jewish authorities in Tripoli who sequestered everything in order to guard the rights of his widow and only daughter back in Sicily. The fact that "the Jewish court and elders" were able to take possession of the goods of the foreign Jew demonstrates that the right of the non-Muslim communities to deal with estates of their co-religionists was still recognized in the eleventh century. The Egyptian merchant tried to recover his shipment, but the Jewish authorities in Tripoli refused to return it without a full-fledged lawsuit between the merchant and the representatives of the widow and the orphan, a protracted affair. In order to protect their countryman, the rabbinical court in Old Cairo turned to the Jewish high court in Jerusalem. The reasoning of the Cairene court was that any delay in the return of the goods of the Egyptian merchant might lead to their confiscation by the Muslim authorities of Tripoli.[50]

We are led to ask why Muslim merchants and passengers, like Ibn Jubayr, sailed on Christian commercial ships given that their maritime practice of inheritance contradicts Islamic law? The deterioration of Muslim sea power, the increase of piratical attacks, and Christian supremacy over the shipping lanes were the major factors that motivated Muslims to lease Christian ships. By the early twelfth century, Muslim maritime traffic was restricted to North African coasts, while the trans-Mediterranean traffic had fallen under the control of the Italian city-states whose ships frequented the Levantine waters as far south as Egypt. Moreover, most of the pirates who infested the sea lanes were Christian corsairs and privateers, and their commissions made it clear that their primary targets were ships of other religions, *i.e.*, Muslim ships. Therefore, Ibn Jubayr traveled on a Genoese ship

[50] TS 12.5: the contract of 1058; TS 20.152: a clean copy of the appeal; TS Ar. 50.193: the letter stating the fear that the delay of legal procedure by the Jewish court might lead the Muslim government of Tripoli to confiscate the shipment of the deceased. Bodl. MS Heb. a 3 (Cat. 2873), f. 9, deals with a similar issue presented before Daniel b. ʿAzarya, *Gaon* and *nāsī*, in January 1059. The four letters were published by Gil, *Eretz Yesrael*, vol. 2, pp. 724-732; Ben-Sasson, *Yehudei Sitzilya*, pp. 157-171. Similarly, when flotsam of the deceased was found on Islamic shores, the scavenger, as the Islamic law and custom dictated, had to deliver the salvage to the heirs or to the religious leader of the community if the name of the deceased appeared on the flotsam. See TS 13 J 3, f. 4; TS 24.6, ll. 21-27; Ibn Rushd, *Al-Bayān wal-Taḥṣīl*, vol. 15, pp. 374-375; Ben-Sasson, *Yehudei Sitzilya*, pp. 107-112.

because it was safer and more convenient to travel on Christian ships, which used the safer and quicker trunk routes.[51]

Muslim scholars, by analogy, transferred to the sea the religious traditions covering activities on land. With a few exceptions, the law established that a Muslim worshipper had to perform his religious duties, prayer and fasting, as if he were traveling over land. He could neither shorten the prayer nor break the fast if he did not cover the equivalent distance at sea as over land. Likewise, the amount of *zakāt* levied on Muslim merchants importing and exporting commodities by sea was identical to the amount levied on those who moved goods over land.

The unwillingness of Muslim jurists to permit women to travel by sea to make pilgrimage to Makkah may have arisen from concern over both security and propriety. The Mediterranean Sea of the second half of the eleventh century C.E. witnessed, on the one hand, an increase in Christian and Muslim piracy and, on the other, the expansion of Christian naval power, which by that period reigned supreme. With regard to propriety, the *sharī'a* disapproves of the male-female interaction. Therefore, in order to segregate the sexes the *fuqahā'* favored women sailing aboard multi-level vessels.

Our sources reveal that *dhimmī* travelers aboard Muslim ships were permitted to perform their religious rites according to their traditions. The Geniza records frequently confirm that Jewish passengers fulfilled their religious obligations both on the high sea and at port the night before the departure when all passengers and sailors went on board.[52] Muslim tolerance toward the religious rights of non-Muslim travelers extended beyond the simple performance of prayers. Captains and ship-masters were required to transfer the property of the deceased to the real inheritors or to his communal and religious leaders. This observation would explain the willingness of Jewish merchants to sail aboard Muslim vessels.

Whereas the Roman, Byzantine, Jewish, and the early medieval European maritime laws do not discuss cases of death on board, the early Islamic jurisprudential literature describes at length the practi-

[51] John Pryor, *Geography, Technology, and War. Studies in the Maritime History of the Mediterranean 649-1571* (Cambridge: Cambridge University Press, 1992) pp. 135-159. For further details about providing armed personnal and protection against pirates see Irene B. Katele, "Piracy and the Venetian State: The Dilemma of Maritime Defense in the Fourteenth-Century," *Speculum* 64 no. 4 (1988), pp. 865-889.

[52] Goitein, *A Mediterranean Society*, vol. 1, p. 314.

cal procedures to be taken by the sailors and passengers when they encountered such a circumstance. After performing the ceremonial funeral rites, it was their duty to dispose of the corpse in the sea in order to avoid the spread of disease, stench, and damage to the cargo. The practice of maritime burial applied to all passengers on board regardless of the national, religious, and social allegiance of the deceased. Hence, it is safe to assume that had the ship been operated or owned by Muslims, all travelers aboard would have been required to obey Islamic maritime rules except for certain religious rituals associated with performance of their prayers, holidays, and, for Jewish sea travelers, observance of the Sabbath.

SUMMARY AND CONCLUSIONS

Within less than a century of the rise of Islam in Arabia in 622 C.E., the Prophet's successors, especially the Umayyads, were able to dominate more than a half the maritime possession of the former neighboring empires of Persia and Byzantium. The Red Sea, Persian Gulf, and parts of the coasts of the Indian Ocean in the East, and the eastern, southern, and western coasts of the Mediterranean Sea in the West fell under Islamic dominion. Although the scale of Islamic expansion seems to be one of the fastest and most impressive in recorded history, the early caliphs, namely, the Umayyads, realized that the establishment of an organized and powerful state would require them to maintain the former administrative system in the newly captured territories, which in turn required them to seek the participation of Greek, Coptic, and Persian officials who were left at their posts. Owing to this policy and the tolerance of Muslim caliphs toward the local population, the period of the early and high caliphate witnessed a great cultural florescence and laid the ground for the later commercial revolution. However, while the economic and political changes were noticeable following the Islamic expansion, with the enthronement of the ʿAbbāsids came a complete change in the administrative, cultural, and religious systems.

The lack of historical and documentary evidence regarding the regulations at sea during the first and second Islamic centuries might be explained by as follows. First, with the exception of the Persian Gulf and the Arabian and Red Seas the involvement of the Arab merchants in the Mediterranean trade was insignificant. Christian and Jewish traders dominated the commercial activities in the Mediterranean. This in turn meant that shipowners, sailors, and merchants engendered the pre-Islamic maritime laws and practices. Second, the process of Islamicizing and Arabicizing the traditions, which substantially contributed to the integration of various ethnic and religious groups into the Islamic *umma*, took place over a long span of time—almost two centuries. This period was marked by the continuity of the social norms of local inhabitants. Third and most importantly is the formation of the ancient Islamic judicial system in the late seventh and early eighth centuries C.E. The *qāḍī*s essentially relied on the Qurʾān, *sunna*, and local customs, as long as they did not

contradict the *sharīʿa*, in issuing a personal judgment. Consequently, we may reservedly assume that the Rhodian Sea Law was effective in Islamic territories during the first and second Islamic centuries. This Byzantine customary maritime law apparently underwent a more thorough process of Islamicization in later periods.

As the Mālikī, Ḥanbalī, Ḥanafī, Shāfiʿī, Ẓāhirī, and the Shīʿite doctrines, *i.e.*, *uṣūl al-fiqh*, became systematically affirmed during the third century of the *Hijra*, the jurisprudential sources shed further light on Islamic maritime laws and customs. These sources are characterized by the employment of legal techniques to search for possible solutions to altercations and disputes occurring at sea or in the ports. When the *muftī* was "unfamiliar" with maritime issues, he frequently used the method of *qiyās* comparing legal maritime problems to situations on land for which a precedent could be found in earlier traditions. We also observed that, except for a limited number of issues, jurists, be they of the same or different law schools, disagreed amongst themselves on numerous occasions. Such controversy can be interpreted as differences of personal legal opinion amongst jurists, or as differences between local maritime customs in a specific territory or amongst the various regions, or as owing to the fact that Islam is considered a dynamic religion which adjusts itself to the current situations and requires the legal authorities to judge the incident according to *time*, *place*, and *circumstance*; therefore, with the exception of divine and personal rules, Muslim lawyers did not codify Islamic laws.

According to this assumption, a curious reader would then ask: Why, unlike the rest of the Muslim world, did the Malaysian Muslim authorities codify their maritime laws during the late thirteenth century C.E.? The codification sprang from political and commercial purposes. The *sulṭān* saw that the flowering of Malacca as a commercial power in the Straits, made it necessary to organize trade matters and to state the nature of his sovereignty for political purposes. In addition, the text was codified at the same time that Islam's grip on the island in South-East Asia was at its strongest.

No doubt Islamic maritime tradition in the Mediterranean Sea as well as other Islamic coastal territories exhibited a remarkable continuity with the previous customs of the former states. The international commercial contacts between the Islamic and foreign world led to the borrowings of many laws. As a result, the custom in the Mediterranean extended beyond the jurisdiction of the individual state.

Many articles of the Rhodian maritime codes were incorporated into Islamic practice. Nonetheless, Muslim authorities frequently added further legal interpretations and analysis to pre-Islamic customs to respond the many local variations, the differences of personal opinion of the jurists, and the application of land rules to the sea. The practice of land-sea reasoning analogy was greatly welcomed by Muslim jurists and involved many themes such as naval warfare, taxation, religious tradition (purely Islamic), collision, hiring labors, and freight charges.

Through this study we have offered a glimpse of Islamic legal thinking concerning maritime laws, habits, and practices, and the attitude of Muslim jurists to issues pertaining to the sea. Surveying jurisprudential works and supporting them by substantial evidence from the Cairo Geniza documents and travel accounts, the study has explored the historical development of Islamic maritime tradition through a span of seven centuries (from the ninth to the fifteenth centuries C.E.), and the legal methods the *fuqahā'* practiced to issue their judgments.

While this study has added to our understanding of the origin of classical Islamic maritime civilization, the legal opinions concerning commercial law at sea remain to be studied. Furthermore, in order to acquire a fuller picture of the continuity of the pre-Islamic practices, their integration and incorporation into Islamic law, and the transformations of maritime practices and habits in the Mediterranean countries, it would be necessary to compare Islamic maritime customs with the Rhodian Sea Law and the collections of maritime codes of the Italian city-states. Such an investigation would enable legal historians to understand and appreciate the Islamic influence on and contribution to the development of international law of the sea.

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